S. HRG. 100-98, PT. 3

DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1988

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 2763

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1988, AND FOR OTHER PURPOSES

Part 3—(Pages 1–915)

BOARD FOR INTERNATIONAL BROADCASTING
COMMISSION ON THE BICENTENNIAL
OF THE U.S. CONSTITUTION
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
LEGAL SERVICES CORPORATION
NONDEPARTMENTAL WITNESSES
STATE JUSTICE INSTITUTE
THE JUDICIARY
U.S. SENTENCING COMMISSION

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1988

TUESDAY, MAY 12, 1987

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senator Hollings.

BOARD FOR INTERNATIONAL BROADCASTING

STATEMENT OF MALCOLM S. FORBES, JR., CHAIRMAN, BOARD FOR INTERNATIONAL BROADCASTING

ACCOMPANIED BY:
- E. EUGENE PELL, PRESIDENT, RADIO FREE EUROPE AND RADIO LIBERTY, INC.
- BEN J. WATTENBERG, VICE-CHAIRMAN, BOARD FOR INTERNATIONAL BROADCASTING

BUDGET REQUEST

Senator HOLLINGS. The subcommittee will begin its hearing this morning with the Board for International Broadcasting [BIB].

We welcome Mr. Malcolm S. Forbes, Jr., Chairman of the Board. Mr. Forbes is accompanied by Mr. E. Eugene Pell, the President of Radio Free Europe and Radio Liberty.

The Board is asking for $203,573,000 for fiscal year 1988, which includes $202,336,000 for Radio Free Europe and Radio Liberty. They have also submitted a $33,195,000 request for a fiscal year 1987 supplemental.

We also welcome Mr. Ben Wattenberg. How are you feeling?

Mr. WATTENBERG. Pretty good, thank you.

Senator HOLLINGS. I keep reading you.

Mr. WATTENBERG. I now feel better.

Senator HOLLINGS. That is good.

PREPARED STATEMENT

Mr. Forbes, we will take and print your statement in its entirety in the record, and you can highlight it as you wish.

BOARD FOR INTERNATIONAL BROADCASTING

STATEMENT OF MALCOLM S. FORBES, JR., CHAIRMAN

Radio Free Europe and Radio Liberty are the most powerful instruments the United States has for influencing the course of internal developments in the Soviet Union and Eastern Europe. Shortly after his arrival in the West, Anatoly Shcharansky gave a moving testimony to the importance of Radio Liberty in sustaining the hopes and courage of oppressed individuals in the Soviet Union. Zbigniew Brzezinski in his recent book Game Plan stated the following about Radio Free Europe:

> "The most important and perhaps least recognized service that America has rendered over the years to the preservation of a European identity in Eastern Europe has been its sponsorship since 1950 of Radio Free Europe. Though its broadcasts have been frequently jammed, RFE has almost singlehandedly prevented Moscow from accomplishing a central objective: The isolation of Eastern Europe from the rest of Europe and the ideological indoctrination of its people."

Jerzy Urban, the official Polish government spokesman, essentially confirmed this when he stated, "If you would close down Radio Free Europe, the underground would cease to exist."

Another evidence of the enormous impact of these radio stations is their treatment by the Soviet Union and its allies. Contrary to international agreements to which they are signatories, the USSR and certain of its allies engage in intensive jamming of RFE/RL's signals. Indeed, more than seventy percent of all Soviet and East European jamming is aimed at

RFE/RL frequencies. Recently, the USSR ceased jamming the Russian language broadcasts of the BBC, only to turn those jammers against Radio Liberty. The Soviet media also engages in a constant vilification of Radio Liberty and Radio Free Europe.

The indisputable fact is that the Kremlin fears these radio stations more than any other Western broadcaster. Newspapers and other media in our own country that are not familiar with RFE/RL broadcasts sometimes assume that this is because those broadcasts are more "hard-hitting" or "strident" than other Western broadcasters. This is not the case. If we were to broadcast crude propaganda or bombast to the East, no one would listen very much. The people of the East bloc get too much shop-worn propaganda from their own media as it is. RFE/RL's broadcasts are now, and always have been, of high intellectual and journalistic quality and accuracy.

Mr. Chairman, the Soviet leadership and their allies in Eastern Europe are adamantly opposed to RFE/RL precisely because the focus of its broadcasts, unlike those of any other international broadcaster, is on events in their own countries. They are less concerned about their citizens receiving accurate news about events outside the Communist world than they are about their citizens learning the truth about what is going on within their borders. That is the real reason they attempted to restrict information about the Chernobyl accident. RFE/RL's coverage of that incident, by the way, was a model of journalistic balance and objectivity, and an invaluable human service to our 50 million listeners.

Never has the unique mission of Radio Free Europe/Radio Liberty been more important than now. Nearly every day in the newspapers we read of startling changes taking place in the Soviet Union. Eastern Europe is also undergoing a painful period of evolution as it adjusts both to the implications of the recent events in Poland and to the ramifications of Gorbachev's new policies. Despite talk of glasnost (openness), the Soviet and

East European media remain under tight government control, manipulating public perceptions of internal changes to suit official objectives. The people of these countries vitally need a source of accurate and balanced information about what is happening in their own countries. In providing them with that source, RFE/RL can help accelerate and deepen the process of change taking place in Eastern Europe and the Soviet Union. A prime example of the potential impact of RFE/RL was the rise of the Solidarity movement in Poland, a development made possible in part by the intensive coverage RFE's Polish Service gave to the movement in its early stages. More than three-fourths of Poland's adult population made these broadcasts their principal source of news during the years of crisis.

I fully recognize that the Federal Government is faced with severe budgetary constraints. I would point out, however, that the enormous leverage we gain from Radio Free Europe/Radio Liberty is achieved at a minute cost in national terms. Total expenditure on Radio Free Europe and Radio Liberty since 1949--a total of 38 years--amounts to less than fifteen hours of Federal spending at current rates. The Department of Defense spends in four hours what RFE/RL proposes to spend in all of FY 1988.

The budget we are submitting for FY 1988 increases RFE/RL operations above current levels by $4.6 million for urgently needed improvements in the areas of Soviet nationalities programming, physical sites security, computerization, personnel system consolidation, and training and development. Much larger than the operational increases is a mandatory foreign currency rate adjustment of $27.2 million. Exchange rate fluctuations make it necessary to adjust the foreign currency levels in the BIB budget request annually. The FY 1988 currency rate adjustment of $27.2 million is required because of the precipitous decline in the dollar during the past year and is part of our budget over which we have no control.

I am prepared to answer any questions you may have about our operational budget. In the remainder of my testimony, I would like to focus, however, on two items outside the ordinary operational budget that are of vital importance. First, our FY 1987 supplemental request to cover massive currency exchange losses. Second, the importance of our modernization program for upgrading obsolete and under-powered transmitting facilities.

The supplemental request for Fiscal Year 1987 of $33.2 million is urgently needed to compensate for losses due to the precipitous devaluation of the dollar against the principal currencies which RFE/RL spends, the German Deutsche Mark, the Portuguese escudo, and the Spanish peseta. Fully 81% of RFE/RL's budget is in foreign currencies, a larger portion than any international agency. Without timely action on the $33.2 million supplemental to offset the precipitous decline in the dollar from the previously budgeted levels, RFE/RL will be forced to initiate actions in April leading to curtailment or suspension of broadcasting operations in July. Bankruptcy of the corporation would eventually ensue. In such an event, the cost of liquidation of obligations -- including severance payments to employees, unemployment payments, funding of U.S. and German pension plans, cancellation of leases, agreements and contracts -- is estimated at over $340,000,000. Liquidation of the corporation's assets would cover only a very small portion of this amount. I do not want to be an alarmist--but I am alarmed at what the decline of the dollar has done to our budget this year. I appreciate this Committee's recent action in support of our full $33.2 million supplemental request. Every Administration since the BIB was formed--and every Congress--has always seen fit to make up currency losses to RFE/RL on a routine basis. For our agency, final passage of this supplemental funding is imperative if we are to make it through this fiscal year.

I would also like to stress the vital importance of our modernization program. I mentioned earlier that the Soviet Union had turned the jamming power once aimed at the BBC on Radio Liberty. This is in line with an ongoing Soviet program of intensifying jamming of RFE/RL. We believe that the Soviets are undertaking what is, in effect, a pincer movement. On the one hand, by taking a few modest steps to enliven their own media and by making selected Western broadcasters more accessible, they seek to draw listenership away from RFE/RL. On the other hand, by intensifying their jamming of our signals, they will make it increasingly difficult for our listeners to tune in. We are squeezed in the middle.

There is nothing we can do about increasing competition from the Soviet media or from other Western broadcasters. Indeed, we welcome it. But there are steps we can take to overcome jamming. Our current transmitting facilities are antiquated and underpowered. With the support of your Subcommittee we have begun the long-overdue modernization program designed to refurbish our existing transmitting facilities. Four 100 kilowatt replacement transmitters have been installed in the Federal Republic of Germany. Contracts have been signed for the purchase of eight 250 kilowatt transmitters to replace a similar number of obsolete 100 kilowatt transmitters in Portugal and we expect delivery this summer. An increase in transmitter power is essential to the delivery of an intelligible signal in an environment which is increasingly jammed. All of the 22 languages in which RFE/RL broadcasts, with the exception of Hungarian and Romanian, are heavily jammed.

The funding request we are submitting today includes $41.9 million for the final phase of a $77.2 million, three year refurbishment project. This amount will be used to convert an existing receiving station in Portugal to a transmitting station. No funding is included for RFE/RL's share of the costs of a joint RFE/RL - Voice of America transmitter base in Israel, for which negotiations are proceeding with every expectation of a successful conclusion very soon. Upon completion of negotiations we expect to be back to the Committee for start-up costs. When this project is completed, we shall at last have the capability of delivering a strong, one-hop signal to the Moslem people of Soviet Central Asia.

Peter Reddaway, the Director of the Kennan Institute in Washington, D.C. has said, "there is no more important aspect of Western policy towards the Soviet Union than foreign radio broadcasts." Mr. Chairman, once again I urge your Subcommittee to support our budget request. It is imperative that the vital life-line of Radio Free Europe/Radio Liberty remain extended to the people of Eastern Europe and the Soviet Union.

RFE/RL AS FOREIGN POLICY INSTRUMENTS

Senator HOLLINGS. Mr. Forbes, you may proceed.

Mr. FORBES. Thank you very much, Mr. Chairman.

Just a couple of points. One is that we not lose sight of these radios as effective instruments of American foreign policy. Given the amount of dollars involved, there is probably no instrument that has as much impact on Eastern Europe and the Soviet Union as these radios do on a day-to-day basis.

Obviously, in terms of military equipment, one has it for defense needs, and one hopes that it never has to be used against an enemy. With the Soviet Union, however, we do interact each day with these radios; 55 million people in Eastern Europe and in the Soviet Union listen to these radios.

The reason why they are so effective and have such a wide audience is that they are, you might say, a radio in exile. They are a surrogate radio. They provide the kind of services, the kind of news that a domestic radio would provide in a free society.

RFE/RL AUDIENCE FIGURES

Senator HOLLINGS. How do we know that it is 55 million?

Mr. FORBES. There are literally several hundred thousand citizens from the Soviet Union who visit Western Europe each year. We poll through the various opinion organizations, despite the presence of the KGB, and interview these people for several hours. It is a very sophisticated technique that has been developed over the years, so we are able to conduct several thousand indepth interviews. Many other international radios——

Senator HOLLINGS. With the KGB present?

Mr. FORBES. Not even with the KGB present.

Senator HOLLINGS. Not with the KGB present.

Mr. FORBES. Not with the KGB present.

Senator HOLLINGS. I thought that you were getting pretty good. [Laughter.]

Mr. FORBES. We think that we are good, but not that good.

Despite the presence of the KGB on these visits, we are able to peel people off and do these indepth interviews. Other international radios use us, such as the BBC and the VOA. They contract to see these results because we do ask a wide variety of questions.

AUDIENCE SURVEYS

While these surveys are not quite as precise as a Nielsen Survey, they do give you a fairly decent idea of the kind of listenership each one of these services have. The few times within the Soviet Union that they have their own social surveys, which occasionally get published there, the results surprisingly correspond with those findings that we have.

We have to adjust our data for the fact that you have a disproportionate number of people from urban areas, and also a disproportionate number of people from the Communist Party. However, they do have a lot of what you might call civilians visiting Western Europe under these guarded conditions.

If a factory wins a production contest, they will call you up on Thursday night and say, "Hollings, pack your bags, you are going to France tomorrow." That is how they do their travel there. So we are able to conduct these interviews in Western Europe and elsewhere.

STATUS OF JAMMING

Senator HOLLINGS. With that kind of penetration, is there a step up of the jamming efforts or not; what is your position there?

Mr. FORBES. On the jamming, there is absolutely no doubt that the jamming intensity has increased. The BBC estimates that the Soviets spend the equivalent of up to $1.2 billion a year on jamming, and over 70 percent of that jamming power is directed against Radio Free Europe and Radio Liberty.

INTENSIFIED JAMMING

Moreover, in January, the BBC ceased to be jammed by the Soviets, and those jamming transmitters, this jamming equipment was turned against Radio Liberty.

We concentrate on domestic news. For instance, on Chernobyl, we just didn't report the disaster, we gave people tips on how to wash the vegetables and broadcast health precautions, we do give it a local content, a local flavor, which is why that jamming is so intense, and which is why these radios are so effective.

For example, Solidarity. The Polish Government and the leaders of Solidarity, have both testified that if it hadn't been for the information provided by Radio Free Europe, Solidarity would never have reached the influence and the nationwide impact that it had in Poland.

Senator HOLLINGS. Are they spending more money on jamming than we are on the actual broadcasts?

Mr. FORBES. It is a ratio of over 3 to 1. Each dollar we spend on broadcasting, they spend $3 to $5 on jamming.

Senator HOLLINGS. It is like the Moscow Embassy, they spent more on it than we did. [Laughter.]

Mr. FORBES. Exactly.

CURRENCY LOSS—SUPPLEMENTAL NEEDED

These radios are effective, and there are two areas that are really critical for us at this time in terms of money. One is, of course, currency. Over 81 percent of our budget goes for deutsche marks, primarily, and other foreign currencies. With the fall of the dollar against the deutsche mark, we are, in this fiscal year of 1987, $33 million short. We are profoundly grateful that your committee supported that.

Senator HOLLINGS. We will have that up this week, this afternoon or tomorrow.

Mr. FORBES. Great, because if that supplemental doesn't get through one way or the other, we will literally run out of budgeted money by the end of July, and we will be off the air shortly thereafter. So it is life or death for us.

CAPITAL MODERNIZATION NEEDS

The other area that is of critical importance, a little longer term, is rehabilitating our obsolete transmitting equipment. A lot of this equipment was designed for a life of 20 years, and it is now 30 years old. It should have been rehabilitated and modernized 10 years ago.

We just started in fiscal year 1986. We badly need to get this stuff up to snuff. We have at our transmitting site in Portugal, for example, a shop there that cuts spare parts for this equipment because the manufacturer doesn't make it any more.

Senator HOLLINGS. What is your estimate? If I wanted to bring Radio Free Europe and Liberty up to snuff, what is the estimate of the cost?

Mr. FORBES. The estimate is $41.9 million to complete the rehabilitation of our transmitting sites.

Senator HOLLINGS. How much of the $41.9 million are you requesting for 1988?

Mr. FORBES. We are requesting all of the $41.9 million. We had $16 million and $18 million in the two previous fiscal years.

Senator HOLLINGS. All right.

Mr. FORBES. We are on schedule. We are keeping it within the budget. There is no money within the pipeline. If we don't get an appropriation for fiscal year 1988, there is no money there, and literally this thing stops in midcourse.

With the intensification of Soviet jamming, we need that more powerful equipment, more than ever before, because there is obviously no point in sending a signal if the signal can't get through. In this era of public diplomacy, we should have an effective instrument, as these radios are, so that at least they can get the broadcast signal through.

Just in closing, I would just like to remind the committee of a saying of Nikita Khrushchev, who said back in the early 1960's that Berlin was a bone in the throat of the Soviet Union.

CULTURAL ROLE OF RFE/RL

The real bone in the throat is Radio Free Europe and Radio Liberty, because we do broadcast the truth. We are more than just a radio station. We are, you might say, the preserver of their culture, of their literature, of their religion, of their history and political traditions.

We are more than just an international radio. We are a whole lot of other things besides. In a true cultural sense, we are the preserver of the flame, the keeper of the flame for these people under totalitarian rule.

QUALITY CONTROLS

Senator HOLLINGS. How do you guard against politicizing of the broadcasts?

Mr. FORBES. We have a number of safeguards. We have a whole broadcast analysis department, which goes over scripts.

In the BIB, the BIB staff goes over scripts, and also contracts out to respected scholars in the field to do studies on the various services. We will take a collection of the scripts of the broadcasts, and we do an analysis to see whether they are meeting our own guidelines.

We have guidelines and objective standards, and we take a number of steps to be sure that those standards are met. When they are not, we take the appropriate disciplinary actions.

OBJECTIVE NEWS COVERAGE

Senator HOLLINGS. As a matter of interest, what would be broadcast for Central America and the Contras?

Mr. FORBES. I think Gene could give you a detailed response to that. But it is very objective, we don't editorialize.

Senator HOLLINGS. How do you get objective? I would like to get an objective statement. [Laughter.]

Give that one to me, will you?

Mr. FORBES. Given my views on it, I am not the one to ask.

Mr. WATTENBERG. I am very partial on that, Senator.

Mr. FORBES. Ben and I have both written editorials in support of Contra aid, so we are perhaps not the ones to ask.

POLICY CONSIDERATIONS

Mr. PELL. One of our guidelines says that we will not operate in a manner inconsistent with U.S. foreign policy. When I have cited that to people before, they have come back with a similar question: What is U.S. foreign policy in some instances?

I think the answer to the question is that we have, on this issue, since last fall, when it first became a public one, devoted very full and complete attention to all of those things known about it.

In other words, we have broadcast to the Soviet Union and Eastern Europe, I believe, a balanced and comprehensive representation of what the Western and the United States media had to say on the subject. We have made certainly no attempt to keep it out of our programming, or our newscast. I think that would be folly, and inconsistent with what we are all about.

So to the extent that there is an accurate reflection of what is going on in the American or the Western press, you will see that same thing reflected in our broadcasting to Eastern Europe and the Soviet Union.

COVERAGE ON NICARAGUAN CONTRAS

Senator HOLLINGS. They are broadcasting now, I take it, support for the Contras, because that is the public policy.

Mr. PELL. No, sir; I wouldn't tell you that we are broadcasting support. What we are broadcasting is a range of views.

Senator HOLLINGS. We are spending $100 million right this minute. If you are not broadcasting that, then what are you broadcasting, that you are not for the Contras?

Mr. PELL. We take the position that we are a news organization just like any other. We are broadcasting a representative sampling of what U.S. opinion is on this subject. We are not taking sides any more than any other news organization would.

Senator HOLLINGS. What about government policy, though?

Mr. FORBES. We would report that the U.S. Government's policy is to support the Contras, and that the administration wants Contra aid.

Mr. PELL. We have no position of our own on this subject.

U.S. FOREIGN POLICY AND RFE/RL BROADCASTS

Mr. WATTENBERG. There is a term of art in our guidelines, which was referred to here, which is that our broadcasts shall not be inconsistent with U.S. foreign policy, which is not the same as saying that it shall be consistent with U.S. foreign policy.

In other words, I think that it would be against our guidelines for us to be sort of banging away, saying that the United States effort in Nicaragua is bad. That would be inconsistent with U.S. foreign policy. On the other hand, if we gave just strictly a one-sided view of it, that Forbes, Pell and I might support, that would not be necessarily useful either.

What we try to do, as Gene said, is be a good news reporting organization that gives a full range of opinions, but that is not beating up on the U.S. Government, obviously, in order to gain the credibility of the listeners.

INFLUENCE OF EXECUTIVE BRANCH

Senator HOLLINGS. Did you, at any time in the past couple of years, receive any directive or suggestion, you might say, from the White House or the National Security Council on aid to the Contras?

We heard yesterday in the Iran/Contra hearing that it was the President's policy to keep them alive until he could change the mind of the Congress. Did you ever get any message of that kind?

Mr. FORBES. No; we didn't, because Radio Free Europe and Radio Liberty are set up as independent entities, so that it wouldn't come under the direct direction of the U.S. Government.

The BIB is a Federal agency, which receives the moneys, and then makes grants to Radio Free Europe and Radio Liberty. Those two radios would not receive directives, say, from the State Department. The reason for that is that in the conduct of the foreign policy, there is often a temptation to say, hey, muffle your broadcasts, don't broadcast embarrassing news about the Polish Government because of the United States——

Senator HOLLINGS. What about American news about the U.S. Government, has anybody asked you to cover or not to cover, expand upon?

Mr. FORBES. No, sir.

Senator HOLLINGS. What about the hearings that we have going on?

Mr. FORBES. We would report the hearings, but we receive no directions.

QUESTION OF RELOCATION

Senator HOLLINGS. Now in regard to the location of the radios. With that differential in currency, the devaluation of the dollar having such a market effect, technically could you locate your facilities here in the United States?

Mr. FORBES. Technically, it could be done. On that whole issue of relocation, we have a subcommittee within our Board, with Lane Kirkland, Ed Ney, and Arch Madsen, who are examining this whole question now, all the ramifications on the feasibility and desirability. They are completing this investigation now, and we should have a written report certainly by the end of the summer.

There would be a huge upfront cost in transferring, say, Radio Liberty to the United States of several tens of millions of dollars. But this subcommittee is examining the costs, the feasibility, and the desirability.

Senator HOLLINGS. That report will be forthcoming shortly?

Mr. FORBES. By the end of the summer. We should have it, certainly, by Labor Day.

Senator HOLLINGS. What about the replacement personnel who speak unique foreign languages, I understand that this is a difficulty.

EXCHANGE RATE STABILIZATION FUND

Mr. FORBES. Just another point on the relocation and the currency problem. Over the past 11 years, the Treasury Department has figured out that with all the volatility of the dollar, if we had had an exchange stabilization fund in 1976, when the violent movement really got underway, the U.S. Government wouldn't have lost any money over an 11-year period.

Senator HOLLINGS. Forbes is the only one who would know that, isn't that right, Ben?

Mr. WATTENBERG. Yes sir.

Mr. FORBES. The gains in the good years would have made up the losses in the bad years.

Mr. WATTENBERG. You should also ask him about the deficit, he is very good at that.

Mr. FORBES. The problem on currency is that in the good years, the gains go back to the Treasury, and in the bad years we have to come up for more money.

RECRUITMENT AND RETIREMENT DIFFICULTIES

On the problems of languages of these minorities within the Soviet Union, and the recruitment, this has been a key problem for Gene. Gene can tell you the acute problems in trying to recruit these people.

Mr. PELL. It is one of the biggest problems facing the radios, Mr. Chairman. We are losing probably one-third of our programming staff over the next 4 to 5 years because of retirements. For some of the exotic languages, for example, there is no emigration, for example, from Tajikistan, or Uzbekistan, or Kazakhstan, so where do you go to find the people?

When you can locate somebody, perhaps in a refugee camp in Pakistan, for example, you often will find somebody who is a second or third generation, who may not speak the language as it is currently spoken in the country to which we are broadcasting. He has no training in broadcasting or journalism, and doesn't understand the United States, and he may not speak English.

IN-HOUSE TRAINING NEEDED

We are increasingly faced with the problem of having to train a lot of these people ourselves, when we can locate second or third generation people, who have at least some familiarity with the language and the background.

This is particularly difficult for us in our broadcasts to Central Asia. Radio Free Europe, we don't really have that much difficulty in locating qualified people, whether they are for the Polish, Hungarian, or Czechoslovak services. As we have said before, where do you find a Tadjik who meets all of these qualifications?

We are increasing our recruiting efforts. We are increasing our in-house training and development efforts because I think that this is the only way that we can meet that problem.

RADIO FREE AFGHANISTAN

Senator HOLLINGS. What about Radio Free Afghanistan, how are we doing there?

Mr. PELL. We are doing very well. We began 18 months ago to broadcast in the Dari language, starting with one 15-minute program a week. We are up to 7 days a week, with a half-hour program every day. We have begun to broadcast in the Pashtu language as well as part of the half-hour day, and we will soon expand to a daily program in Pashtu. So we will be on the air in both languages daily within the next 3 or 4 months.

Mr. WATTENBERG. Senator, what I think is important to note about the Afghanistan coverage is, I think, our reporters are gathering more information on Afghanistan than any other media organization in the world, and that not only goes back into Afghanistan through Radio Free Afghanistan, but it is broadcast throughout Eastern Europe, and most particularly throughout the Soviet Union.

Our public opinion polls, as Steve indicated, reflect a growing percentage of people in the Soviet Union greatly disaffected with that war, and it has been a rise over the years. As we break down the numbers, it is much more apparent among listeners of Radio Liberty than amongst the population as a whole.

We are putting out, and Gene can fill you in on the details, more information on the Afghanistan situation than anyone else in the world. And, as I understand, a lot of other media are picking up our stuff.

ATTITUDINAL SURVEYS ON AFGHANISTAN

Mr. PELL. They have, and we have been able, because of the interview process, and the data base of interviews we have available to us, to track public opinion in the Soviet Union, to the extent that anybody can do it, on this issue. As has been said, we have noticed a very definite trend line of opposition to the war within the U.S.S.R. amongst those who identify themselves as regular listeners to Western broadcasts as opposed to those who do not.

We operate a news bureau in Islamabad, for example, where we have our own full time correspondent to provide the information for Radio Free Afghanistan and our other services. We broadcast weekly programs about events in Afghanistan in Russian and in several other languages.

AFGHAN CASUALTY FIGURES

Senator HOLLINGS. What about the casualty counts of Soviet casualties, do you have any way of getting a fairly accurate count?

Mr. PELL. No more so than any other organizations. We are guided by official figures from the U.S. Government and our own interpretation of the numbers that come out of the Soviet Union.

RFE/RL RESEARCH

Let me just add, on that point, one of the things that is not commonly recognized about the radios, because we are called a radio service, is that we also are a world center of research and scholarship on Eastern Europe and the Soviet Union.

We have about 100 researchers working full-time in Munich. We publish volumes of material which are used by universities, by the U.S. Government, by the Congress, by the State Department, by the White House.

We have a constant stream of scholars and others coming through there, taking advantage of this unique resource. We have the largest archives on Eastern Europe and the Soviet Union anywhere in the West housed in our offices in Munich. So we are more than just a radio service.

This enables us to have a unique perspective on events inside these countries because we have very qualified, world-recognized analysts who devote themselves full time to just this kind of question.

EAST EUROPEANS PHONE RFE

Mr. FORBES. One other source of input from the East is our telephone service. Three countries, Bulgaria, Czechoslovakia, and Hungary, have telephone systems where you can make international phone calls. We discovered this 1½ years ago, and we have put in machinery that can record people for up to 2 minutes. We don't want to go longer than 2 minutes because the tracers can get on them. But they can leave messages on the latest arrests down to the latest humor.

We get thousands of these calls, and a little over 1 year ago, we noticed a sharp fall off on the incoming calls, so we made a broadcast to Czechoslovakia and elsewhere, why aren't you calling in?

The response that we got back was: Don't you people realize that this is holiday time, and we are all at home. We like to make the calls from the office and charge it to the State. [Laughter.]

Senator HOLLINGS. On Radio Marti, we get some casualty counts, in working with the agency, out of Angola, and it has had a marked effect. I was just wondering if we had had any feed into your organization. If you are getting some names and hometowns, and everything like that, you start broadcasting that, people really pick up and start listening.

Mr. PELL. We have done that.

Senator HOLLINGS. It has a heck of an effect.

Mr. PELL. It does have a major impact. Interestingly, in the last few months, the Soviets themselves have been far more forthcoming, in their own media, about discussing such matters. I think that part of that is at our own prompting, because they know that if they don't do it themselves, people are still going to hear it from some place else.

CHERNOBYL

Chernobyl, as Mr. Forbes mentioned, is another good example of that. There was a several-day period when the people most affected had no information whatsoever from their own government. The only information they had about their situation was what was coming from us and from other Western broadcasting.

Senator HOLLINGS. You are doing an outstanding job.

THE DEFICIT

Tell me how you would handle the deficit, since Ben mentioned it, and then I will let you go. [Laughter.]

How would you handle it? If you were King for a Day, what would you do?

Mr. FORBES. This is probably why I would never become King for a Day.

I think, realistically, the Gramm-Rudman-Hollings Act, even though the targets may be met through a lot of smoke and mirrors, has very definitely slowed down the growth in Government spending. It is down to 2.5 to 3 percent this year, and if it wasn't for that legislation, it never would have happened.

I think, realistically, if you can slow the growth of Government spending—you will never realistically cut it, but if you slow the growth and have an economy that grows, I think that it will take real whacks at the deficit.

Senator HOLLINGS. Economically, can you slow the growth of the deficit itself without throwing us into a recession?

Mr. FORBES. I think so, as long as we stop debasing the dollar. It has gotten past the point of no return. Every time that it goes down, we get higher interest rates and the prospect of more inflation. They over did it, and they have to go on another tack. It is counterproductive now.

Senator HOLLINGS. It really is. I don't see any other way than some kind of consumer tax, like a value added tax, because the need isn't for $10 or $20 billion, I am looking for $200 billion. Even if we did that, we couldn't get back in the black until 1991.

Even then, we would still be adding another half trillion onto the debt, and have a $2.5 trillion or more debt with interest costs in excess of $200 billion a day, which makes us go down to the bank and borrow $500 million at 8 o'clock this morning, tomorrow morning, and every morning, Christmas morning, as well as the morning of the Fourth of July. I am just adding to the debt, that is all I am doing.

It is Rome, with free bread and circuses up here. I am buying your vote with your children's and grandchildren's money. It is time that we spend some of Mr. Wattenberg's and my money, because we are getting by.

Mr. WATTENBERG. Yes, sir.

Senator HOLLINGS. I don't know, but I hope that we can shake them loose around here, because if we don't do it this year, it can't happen in an election year hardly. It is not going to happen with a new President coming in in 1989. We couldn't do anything before May 1989, effective in 1990. So what you are saying to the financial world is that they are going to have to monetize the debt, and let's just go for inflation. That is bad.

Mr. FORBES. It is bad, and that is why stable economic growth is so important, because if you don't have a stable environment, you are never going to create the capital to cover everyone's needs, including the deficit.

Senator HOLLINGS. Very good. We appreciate your appearance this morning.

Mr. FORBES. Thank you very much.

Senator HOLLINGS. We will let you know on the supplemental.

Mr. FORBES. Thank you. We appreciate your support on that.

Senator HOLLINGS. You can't close down, you have to keep going.

SUBMITTED QUESTIONS

We have a number of questions submitted by committee members for your response. Without objection, we will include them at this point in the record.

[The following questions were not asked at the hearing, but were submitted to the Board for reponse subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

RFE/RL STAFF

RFE/RL shows a projected increase in staff from 1,747 in 1986 to 1,785 in 1988. Personnel costs represent 70 percent of the RFE/RL operating costs.

Question 1:

With the currency problems that have plagued RFE/RL in recent years, has there been or is there now a hiring freeze? Are people being hired to replace staff lost through attrition/ were these critical positions? Doesn't a planned staff growth seem inconsistent with your current budget situation?

Answer:

Management placed a freeze on all but the most essential hires a year ago to meet its Gramm-Rudman requirements. Since then, only limited hiring has taken place. The filling of vacancies requires the specific approval of the Radios' president.

The FY 1987 budget as appropriated provides for a staff of 1,775 employees. Ten essential Soviet Nationalities broadcasting positions have been added for FY 1988. These are for broadcast services which are woefully understrength. Adding even this handful of personnel in the programming area may appear to be inconsistent, given our current budget situation; however, these few slots need to be placed in perspective. RFE/RL lost hundreds of positions during the budget cuts in the 1970's. The institution has been short-handed ever since, operating a seven day per week organization with a five day per week staff.

Question 2:

Given that 70 percent of the operating cost is personnel related, what personnel actions have been taken to reduce or hold down this cost?

Answer:

One of the Radios' principal actions to meet the previous Gramm-Rudman cut was to freeze hirings. In many instances this caused crippling effects on our operation. In the past months, as attrition has made slots available, instead of filling them immediately, Management has re-programmed the slots and selectively used these possibilities to fill the most critical personnel needs.

Concerted efforts and tighter management control have reduced overtime and other premium pay categories of compensation.

Promotions have been curtailed to the minimum. Only functional ones, involving assignments to higher rated work (usually coupled with retirements of more senior employees) have been approved.

CURRENCY FLUCTUATION

The devaluation of the dollar and rising inflation have had a serious impact on RFE/RL's ability to operate at its approved budget level. The problem is further compounded when 80 percent of the operating expenditures are in Deutsche Marks. In fiscal year 1977, Congress established a contingency reserve to permit RFE/RL to operate at the approved budget level when currency fluctuation would otherwise reduce the program level.

Question 1:

After a number of years of experience, do you believe that the contingency reserve process is an adequate means to deal with the currency fluctuation? If not, what alternatives have you considered or proposed to the Office of Management and Budget?

Answer:

The current contingency reserve process does not adequately deal with currency fluctuation due to the time required for passage of a supplemental appropriation, which usually falls late in the fiscal year. An alternative would be the establishment of a Foreign Currency Stabilization Fund.

Since 1977 the Board for International Broadcasting has made grants to Radio Free Europe/Radio Liberty at fixed exchange rates and reported quarterly gains and losses due to exchange rate fluctuations to the Office of Management and Budget. This procedure is in accordance with the regulations governing the Board for International Broadcasting Foreign Currency Contingency Fund.

Section 8(b) of the Board for International Broadcasting Act of 1973 stated (prior to 1984), "The Director of the Office of Management and Budget shall place in reserve and inform the Congress of any amount appropriated under this section which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Inc." Funds from currency gains that were so identified were placed in reserve (apportioned as unavailable). At the end of each fiscal year these funds were allowed to lapse unless losses were certified (according to the regulations) during the same fiscal year.

In 1984, Section 8(b) of the Board for International Broadcasting Act of 1973 was amended. The revision provides that at the end of each fiscal year any remaining currency gains are merged with funds previously placed in reserve from gains (or previously appropriated but not obligated to offset currency losses). In this way, a "reserve fund" (of "no-year money) was established from currency exchange gains to be available to fund currency losses in subsequent years. This "reserve fund" containing $5.8 million was depleted in FY 1986 by the currency loss of over $24 million and a supplemental appropriation of $18.8 million was required to cover this loss.

In order to reestablish this fund so that periodic supplementals are not required for adverse currency fluctuations, a one-time capitalization (of approximately $50 million) is necessary. Subsequent currency gains would replenish the "fund." Without capitalization of this fund, supplemental appropriations will be required for downward currency fluctuations over which the Radios have no control.

Question 2:

Are the budget planning exchange rates realistic? Would you please provide data that shows the planned budget exchange rates, the planned inflation factors, and the approved program levels versus the actual experience including supplemental requests to make up any deficits since establishment of the contingency reserve.

Answer:

Budget planning exchange rates are established ten months before the budget (fiscal) year begins. The volatility of foreign currency exchange rates in the last four years has made these budget planning exchange rates unrealistic.

The following appropriation table for FY 1977 through FY 1987 illustrates the differences between the budgeted and actual exchange rates for each year. Losses or gains are due solely to fluctuations in foreign currency exchange rates. Losses have always been covered by supplemental appropriations (or funds that were previously placed in the contingency reserve). Currency gains were lapsed (prior to FY 1984) unless Congress reappropriated the gains for a specific purpose. In FY 1984 and FY 1985 Congress reappropriated the currency gains for other purposes instead of placing these funds in the contingency reserve.

RADIO FREE EUROPE/RADIO LIBERTY, INC.

($000 omitted)

Fiscal Year	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Appropriation for Operations (Without Suppls.)	52.7	67.3	78.0	80.4	93.5	82.4	90.1	105.6	103.5	97.2	120.5
DM Rate Budget	2.58	2.44	2.11	1.93	1.74	2.25	2.30	2.50	2.72	3.08	2.53
Actual DM Rate	2.37	2.07	1.87	1.78	2.14	2.35	2.52	2.78	3.09	2.32	1.78
(Loss) or Gain	(2.9)	(5.9)	(7.0)	(4.9)	15.7	4.6	8.6	12.3	10.4	(24.5)	(33.2)

Variations in rates of inflation have no impact on the fixed calculation of gains and losses due to fluctuations in foreign currency exchange rates. The following average inflation rates were included in budgets for FY 1984-FY 1988:

1984	7.0%
1985	7.0%
1986	7.2%
1987	7.5%
1988	6.7%

Question 3:

What impact has the latest currency fluctuation problem had on the operation of RFE/RL? Has there been any cut in programming or hours broadcast?

Answer:

The currency loss for FY 1987 through March 19, 1987 amounts to $13,358,200. Although there have been no cuts in programming or hours broadcast, RFE/RL is currently delaying capital expenditures and one-time payments until supplemental funding has been appropriated for currency losses. Even if all controllables are radically curtailed (such as travel, free lance reporting, full German pension plan payments, timely invoice and vendor payments, and non-contractual personnel benefits) absorption by RFE/RL of the anticipated $33 million currency losses would be impossible. Without timely action on the $33,159,000 supplemental, RFE/RL will be forced to initiate actions in April leading to curtailment or suspension of broadcasting operations in July. Bankruptcy of the corporation would eventually ensue. In such an event, the cost of liquidation of obligations - including severance payments to employees, unemployment payments, funding of U.S. and German pension plans, cancellation of leases, agreements and contracts - is estimated at over $340,000,000. Liquidation of the corporation's assets would cover only a very small portion of this amount.

MISCELLANEOUS FEES/PROFESSIONAL SERVICES

The budget justification requests $8.8 million for miscellaneous fees/professional services. In November 1985 GAO reported a number of problems associated with RFE/RL contracts with its own employees to produce program material. These were known as "freelance" contracts.

Question 1:

Have the problems identified by GAO been corrected?

Answer:

The problems identified by the GAO report with respect to the use of RFE/RL employees in free lance capacities have been corrected.

Question 2:

Please explain the corrective action.

Answer:

Refer to answer to Question 4 below.

Question 3:

How much of the $8.8 million is for free lance contracts?

Answer:

An amount of $2,630,000 is included for free lance services.

Question 4:

Are any of these contracts awarded to employees or relatives of employees of RFE/RL?

Answer:

The issues identified by the GAO report with respect to the use of RFE/RL employees in free lance capacities have been corrected. Principal use of staffers as free lancers is now limited to those "exotic" nationality languages where this talent is simply not available externally. This occurs primarily in the Broadcast Analysis Department where regular staff resources are extremely limited. Employees must be used to keep this department's activities running during periods of staff absences due to illness/vacation. BAD is responsible for monitoring programs for compliance with RFE/RL Policy Guidelines. Additionally, for broadcast purposes there are instances of immediate need for free lance translations which require the use of employees. To reduce this category, Management has advertised extensively in the immediate area and throughout Germany and neighboring France and England to recruit outside free lance help. This program has been only minimally successful. Some candidates have been found, however, and several can be used in the future, pending receipt of security clearances which are currently under way. The above statements apply as well to relatives of RFE/RL employees.

Question 5:

If so, what is the reason for this continuing practice?

Answer:

Refer to answer to Question 4 above.

Question 6:

Please supply for the record a listing of the payments to RFE/RL employees or relatives pursuant to such contracts in 1986 and 1987 to date. Include the name of each employee, amount paid, date paid, and the language skill contracted for.

Answer:

The listings follow.

EMPLOYEE FREELANCE FY 1986

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51881	ABASS FL.3188	410032	11/11/85	800.00		Dari
51881	ABASS S. FL. 3362	410032	09/30/86	310.00		Dari
51881	ABASS FL. 3207	410032	12/06/85	800.00		Dari
51881	ABASS FL 3207	410032	01/30/86	800.00		Dari
51881	ABASS FL. 3242	410032	02/07/86	800.00		Dari
51881	ABASS FL. 3250	410032	03/10/86	800.00		Dari
51881	ABASS FL. 3281,3261	410032	05/07/86	1,600.00		Dari
51881	ABASS FL # 3309	410032	07/08/86	800.00		Dari
51881	ABASS FL-3333	410032	09/08/86	400.00		Dari
51881	ABASS SAYID FL 3320	410032	08/07/86	800.00		Dari
51881	ABASS FL. 3224	410032	01/13/86	800.00		Dari
51881	ABASS FL. 3292	419932	06/06/86	800.00		Dari
		TOTAL BY EMPLOYEE		9,510.00 *	3,087.66 *	
51904	AGOULIAN FL AUG. 86	401030	09/08/86	264.00		Armenian/Russian
		TOTAL BY EMPLOYEE		264.00 *	85.71 *	
51006	ALLIS F. BA-98	410035	05/07/86	2,892.40		Romanian/Russian
51006	ALLIS FL. OCT. 28, '85	410035	11/11/85	476.00		Romanian/Russian
51006	ALLIS FL. OCT. 28, '85	410035	11/11/85	138.60		Romanian/Russian
51006	ALLIS FL. BA-30-FY-86	410035	12/06/85	138.60		Romanian/Russian
51006	ALLIS FL. BA-49-FY-86	410035	01/13/86	37.80		Romanian/Russian
51006	ALLIS FL. 0146	410032	02/07/86	200.00		Romanian/Russian
51006	ALLIS FL. BA-82-FY-86	410035	03/10/86	589.40		Romanian/Russian
		TOTAL BY EMPLOYEE		4,472.80 *	1,452.20 *	
32367	ANGELESCU FL.31	410032	11/11/85	1,084.00		Romanian
32367	ANGELESCU FL. 103	410032	12/06/85	600.00		Romanian
32367	ANGELESCU FL. 135	410032	01/13/86	800.00		Romanian
32367	ANGELESCU FL. 198	410032	02/07/86	800.00		Romanian
32367	ANGELESCU FL. 242A	410032	04/09/86	800.00		Romanian
		TOTAL BY EMPLOYEE		4,084.00 *	1,325.97 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
31548	ANTALIS FL.28	410032	11/11/85	105.00		Czech
31548	ANTALIS FL. 159	410032	01/13/86	90.00		Czech
31548	ANTALIS FL. 218	410032	02/07/86	1,041.00		Czech
		TOTAL BY EMPLOYEE		1,236.00 *	401.29 *	
25282	ASSARÀBOWSKI FL.14	410035	11/11/85	220.00		Polish
25282	ASSARABOWSKI FL. BA-38	410035	12/06/85	228.20		Polish
25282	ASSARABOWSKI FL. BA-69	410035	02/07/86	492.80		Polish
		TOTAL BY EMPLOYEE		941.00 *	305.51 *	
60526	ATSITZ BUGRA FL-BA 140	410035	09/30/86	2,900.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL.BA-17-FY-86,	410035	11/11/85	2,962.20		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-37-FY-86	410035	12/06/85	2,700.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-53-FY-86	410035	01/13/86	2,100.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-73-FY-86	410035	02/07/86	4,980.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-86	410035	03/10/86	1,910.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-92	410035	04/09/86	3,000.00		Tatar-Bashkir/Turkmen
60526	ATSITZ FL. BA-112	410035	06/06/86	6,100.00		Tatar-Bashkir/Turkmen
60526	ATSIZ BA 118	410035	07/08/86	3,000.00		Tatar-Bashkir/Turkmen
60526	ATSIZ BUGRA FL BA-123	410035	08/07/86	2,600.00		Tatar-Bashkir/Turkmen
60526	ATSIZ FL-BA-134	401030	09/08/86	1,600.00		Tatar-Bashkir/Turkmen
		TOTAL BY EMPLOYEE		33,852.20 *	10,990.97 *	
32640	BARONE FL. A-181	410032	01/13/86	40.00		Polish
		TOTAL BY EMPLOYEE		40.00 *	12.98 *	
25277	BEZUCHA FL.2002	410032	11/11/85	100.00		Polish
		TOTAL BY EMPLOYEE		100.00 *	32.46 *	

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EMPL.     NAME                   -ACCT- M./D./Y.         AMOUNT DM       AMOUNT $        LANGUAGE SKILL

25286 BINAR FL. 96               410032 12/06/85           168.75                        Czech
25286 BINAR FL. 161              410032 01/13/86           185.00                        Czech
25286 BINAR FL. 223              410032 02/07/86           180.00                        Czech
25286 BINAR FL. 292              410032 04/09/86           120.00                        Czech

                                TOTAL BY EMPLOYEE          653.75 *        212.25 *

25112 BITSKEY FL. 22779          410032 01/13/86           160.00                        Hungarian

                                TOTAL BY EMPLOYEE          160.00 *         51.94 *


00072 BOJADJIEFF FL.5084         410032 11/11/85           500.00                        Bulgarian
00072 BOJADJIEFF FL. 5108        410032 12/06/85           250.00                        Bulgarian
00072 BOJADJIEFF FL. 5130        410032 01/13/86           500.00                        Bulgarian
00072 BOJADJIEFF FL. 5152        410032 02/07/86           375.00                        Bulgarian

                                TOTAL BY EMPLOYEE        1,625.00 *        527.59 *

32167 BOTSCHEW FL.5097           410032 11/11/85           260.00                        Bulgarian
32167 BOTSCHEW FL. 5117          410032 12/06/85           390.00                        Bulgarian
32167 BOTSCHEW FL. 5139          410032 01/13/86           770.00                        Bulgarian
32167 BOTSCHEW FL. 5161          410032 03/10/86           520.00                        Bulgarian

                                TOTAL BY EMPLOYEE        1,940.00 *        629.87 *

31663 BRUNNER FL.28              410033 11/11/85            70.00                        Romanian
31663 BRUNNER FL. 145            410033 01/13/86         1,732.00                        Romanian
31663 BRUNNER FL. 144            410032 01/13/86           108.00                        Romanian
31663 BRUNNER FL. 202            410033 02/07/86         1,148.00                        Romanian
31663 BRUNNER FL. 248            410033 04/09/86           648.00                        Romanian

                                TOTAL BY EMPLOYEE        3,706.00 *      1,203.24 *
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EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25297	BUGAJSKI FL.BA-12	410035	11/11/85	716.80		Polish
25297	BUGAJSKI FL. BA-40	410035	12/06/85	109.20		Polish
		TOTAL BY EMPLOYEE		826.00 *	268.18 *	
31924	BUJTAS FL.22651	410032	11/11/85	80.00		Hungarian
31924	BUJTAS FL. 22708	410032	12/06/85	248.00		Hungarian
31924	BUJTAS FL. 22781	410032	01/13/86	176.00		Hungarian
		TOTAL BY EMPLOYEE		504.00 *	163.63 *	
51825	CARLSON M. FL.BA-10	410035	11/11/85	1,100.00		Georgian/Armenian
51825	CARLSON FL. BA-32	410035	12/06/85	3,000.00		Georgian/Armenian
51825	CARLSON M. FL.BA-52	410035	01/13/86	2,400.00		Georgian/Armenian
51825	CARLSON FL. BA-71	410035	02/07/86	2,600.00		Georgian/Armenian
51825	CARLSON FL. BA-85	410035	03/10/86	3,084.75		Georgian/Armenian
51825	CARLSON M. FL. BA-94	410035	04/09/86	1,500.00		Georgian/Armenian
51825	CARLSON M. FL. BA-100	410035	05/07/86	1,600.00		Georgian/Armenian
51825	CARLSON M. FL 3A-137	410035	09/30/86	729.60		Georgian/Armenian
		TOTAL BY EMPLOYEE		16,014.35 *	5,199.46 *	
00126	CHCIUK-CELT FL. 2023	410032	12/06/85	50.00		Polish
		TOTAL BY EMPLOYEE		50.00 *	16.23 *	
32590	COJOCARU-POMPEI FL.20	410032	11/11/85	1,236.00		Romanian
32590	COJOCARU-POMPEI FL. 98	410032	12/06/85	1,632.00		Romanian
32590	COJOCARU-POMPEI FL.	410032	01/13/86	2,544.00		Romanian
32590	COJOCARU-POMPEI FL.	420032	05/07/86	384.00		Romanian
		TOTAL BY EMPLOYEE		5,796.00 *	1,881.81 *	
01271	CSABUDA-KALNICZKY	410032	12/06/85	80.00		Hungarian
		TOTAL BY EMPLOYEE		80.00 *	25.97 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32649	CSABUDA-KALNICZKY FL.	410032	12/06/85	264.00		Hungarian
32649	CSABUDA-KALNICZKY FL.	410035	01/13/86	91.00		Hungarian
		TOTAL BY EMPLOYEE		355.00 *	115.25 *	
60549	DAWYDOV FL. OCT. '85	410032	11/11/85	925.00		Russian
60549	DAWYDOV FL. OCT.23	410036	11/11/85	100.00		Russian
60549	DAWYDOV FL. NOV.'85	410032	12/06/85	1,050.00		Russian
60549	DAWYDOV FL. DEC.2	410036	12/06/85	700.00		Russian
60549	DAWYDOV FL. DEC.85	410032	01/13/86	200.00		Russian
60549	DAWYDOV FL. JAN.86	410032	02/07/86	200.00		Russian
60549	DAWYDOV FL. FEB. 28	410036	03/10/86	1,300.00		Russian
		TOTAL BY EMPLOYEE		4,475.00 *	1,452.92 *	
25228	DE WEYDENTHAL FL/124	410035	11/11/85	512.40		Polish
25228	DE WEYDENTHAL FL.2003	410032	11/11/85	170.00		Polish
25228	DE WEYDENTHAL FL. 132	410035	12/06/85	413.00		Polish
25228	DE WEYDENTHAL FL. 2122	410032	01/13/86	216.00		Polish
25228	DE WEYDENTHAL FL. 180	410035	01/13/86	308.00		Polish
25228	DE WEYDENTHAL FL. 137	410035	01/13/86	106.40		Polish
		TOTAL BY EMPLOYEE		1,725.80 *	560.32 *	
32225	DEJA FL. 7/86	410032	02/07/86	880.00		Polish
		TOTAL BY EMPLOYEE		880.00 *	285.71 *	
01220	DEMIAN FL.22652	410032	11/11/85	1,504.00		Hungarian
01220	DEMIAN FL. 22711	410032	12/06/85	480.00		Hungarian
01220	DEMIAN FL. 22783	410032	01/13/86	800.00		Hungarian
		TOTAL BY EMPLOYEE		2,784.00 *	903.89 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32577	DINNYES FL.22654	410032	11/11/85	48.00		Hungarian
32577	DINNYES FL. 22712	410032	12/06/85	72.00		Hungarian
32577	DINNYES FL. 22786	410032	01/13/86	80.00		Hungarian
		TOTAL BY EMPLOYEE		200.00 *	64.93 *	
31867	DIVIS FL.32	410032	11/11/85	93.75		Czech
31867	DIVIS FL. 99	410032	12/06/85	131.25		Czech
31867	DIVIS FL. 164	410032	01/13/86	131.25		Czech
31867	DIVIS FL. 226	410032	02/07/86	273.75		Czech
		TOTAL BY EMPLOYEE		630.00 *	204.54 *	
32436	DLUBAK FL.167	410035	11/11/85	96.00		Polish
		TOTAL BY EMPLOYEE		96.00 *	31.16 *	
51842	FISTEJN FL.34	410032	11/11/85	592.50		Czech
		TOTAL BY EMPLOYEE		592.50 *	192.37 *	
51892	GARDON FL. OCT. '85	410032	11/11/85	325.00		Russian
51892	GARDON FL. NOV.85	410032	12/06/85	300.00		Russian
51892	GARDON FL. DEC.'85	410032	01/13/86	825.00		Russian
51892	GARDON FL. JAN. 86	410032	02/07/86	750.00		Russian
51892	GARDON FL. MAR 86	410032	04/09/86	175.00		Russian
		TOTAL BY EMPLOYEE		2,375.00 *	771.10 *	
51659	GAZI FL.3186	410032	11/11/85	390.00		Kirghiz
		TOTAL BY EMPLOYEE		390.00 *	126.62 *	
51805	GIRNIUS FL.1222	410031	11/11/85	250.00		Lithuanian/Latvian
		TOTAL BY EMPLOYEE		250.00 *	81.16 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51834	GIRNIUS FL. BA-36	410035	12/06/85	4,200.00		Lithuanian/Latvian
51834	GIRNIUS FL. BA-63	410035	02/07/86	1,400.00		Lithuanian/Latvian
51834	GIRNIUS FL. BA-91	410035	04/09/86	4,800.00		Lithuanian/Latvian
51834	GIRNIUS FL-BA-130	401030	09/08/86	1,400.00		Lithuanian/Latvian
		TOTAL BY EMPLOYEE		11,800.00 *	3,831.16 *	
25276	GLABOUSSANOV FL. 5112	410032	12/06/85	470.00		Bulgarian
25276	GLABOUSSANOV FL. 5134	410032	01/13/86	710.00		Bulgarian
25276	GLABOUSSANOV FL. 5156	410032	02/07/86	660.00		Bulgarian
		TOTAL BY EMPLOYEE		1,840.00 *	597.40 *	
32431	GLABOUSSANOV FL.5087	410032	11/11/85	1,570.00		Bulgarian
32431	GLABOUSSANOV FL. 5111	410032	12/06/85	1,650.00		Bulgarian
32431	GLABOUSSANOV FL. 5133	410032	01/13/86	2,180.00		Bulgarian
32431	GLABOUSSANOV FL. 5155	410032	02/07/86	1,820.00		Bulgarian
		TOTAL BY EMPLOYEE		7,220.00 *	2,344.15 *	
51131	GLASHAN FL. OCT. 28	410035	11/11/85	413.00		Russian
51131	GLASHAN FL.125	410035	11/11/85	576.80		Russian
		TOTAL BY EMPLOYEE		989.80 *	321.36 *	
01213	GOENCZOEL FL. 22725	410032	12/06/85	192.00		Hungarian
01213	GOENCZOEL FL. 22793	410032	01/13/86	640.00		Hungarian
01213	GOENCZOEL FL. 22857	410032	02/07/86	80.00		Hungarian
		TOTAL BY EMPLOYEE		912.00 *	296.10 *	
32127	HAMSIK FL.35	410032	11/11/85	300.00		Czech
32127	HAMSIK FL. 102	410032	12/06/85	150.00		Czech
32127	HAMSIK FL. 166	410032	01/13/86	300.00		Czech
32127	HAMSIK FL. 228	410032	02/07/86	300.00		Czech
		TOTAL BY EMPLOYEE		1,050.00 *	340.90 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
31792	HEDREI FL. 22732	410032	12/06/85	320.00		Hungarian
31792	HEDREI FL. 22861	410032	02/07/86	320.00		Hungarian
		TOTAL BY EMPLOYEE		640.00 *	207.79 *	
25245	HEJL FL.36	410032	11/11/85	761.25		Czech
25245	HEJL FL. 103	410032	12/06/85	1,432.50		Czech
25245	HEJL FL. 170	410032	01/13/86	1,455.00		Czech
25245	HEJL FL. 229	410032	02/07/86	1,147.50		Czech
25245	HEJL FL. 296	410032	04/09/86	2,943.75		Czech
		TOTAL BY EMPLOYEE		7,740.00 *	2,512.98 *	
60497	HOLOWATYJ LYDIA FL BA 114	410035	08/07/86	110.40		Ukrainian
60497	HOLOWATYJ LYDIA FL-BA-135	401030	09/08/86	385.60		Ukrainian
		TOTAL BY EMPLOYEE		496.00 *	161.03 *	
51902	ILVES FL.BA-243-FY-85	410035	11/11/85	2,400.00		Estonian
51902	ILVES FL. BA-83-FY-86	410035	03/10/86	2,000.00		Estonian
51902	ILVES FL-BA-132	401030	09/08/86	2,500.00		Estonian
51902	ILVES TOOMAS FL. BA-105	410035	05/07/86	3,900.00		Estonian
		TOTAL BY EMPLOYEE		10,800.00 *	3,506.49 *	
32556	IONESCU FL.21	410032	11/11/85	360.00		Romanian
32556	IONESCU FL. 102	410032	12/06/85	624.00		Romanian
32556	IONESCU FL. 163	410032	01/13/86	540.00		Romanian
32556	IONESCU FL. 228	410032	02/07/86	240.00		Romanian
32556	IONESCU FL. 262	410032	04/09/86	384.00		Romanian
		TOTAL BY EMPLOYEE		2,148.00 *	697.40 *	
51885	IOURIENEN FL. NOV.7	410032	12/06/85	400.00		Russian
		TOTAL BY EMPLOYEE		400.00 *	129.87 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51799	JOKUBINAS FL. DEC.85	410032	01/13/86	200.00		Lithuanian/Russian
51799	JOKUBINAS 16.06.86	410035	07/08/86	258.00		Lithuanian/Russian
51799	JOKUBINAS K. FL 20.0	410034	08/07/86	133.50		Lithuanian/Russian
		TOTAL BY EMPLOYEE		591.50 *	192.04 *	
32425	KALMAR FL.22668	410032	11/11/85	64.00		Hungarian
32425	KALMAR FL. 22735	410032	12/06/85	80.00		Hungarian
32425	KALMAR FL. 22799	410032	01/13/86	200.00		Hungarian
32425	KALMAR FL. 22863	410032	02/07/86	184.00		Hungarian
32425	KALMAR FL. 22910	410032	04/09/86	96.00		Hungarian
		TOTAL BY EMPLOYEE		624.00 *	202.59 *	
32223	KALTCHEV FL.5081	410032	11/11/85	1,880.00		Bulgarian
32223	KALTCHEV FL. 5105	410032	12/06/85	2,150.00		Bulgarian
32223	KALTCHEV FL. 5127	410032	01/13/86	2,050.00		Bulgarian
32223	KALTCHEV FL. 5149	410032	02/07/86	1,930.00		Bulgarian
		TOTAL BY EMPLOYEE		8,010.00 *	2,600.64 *	
00371	KASPAREK FL. 106	410032	12/06/85	45.00		Czech
						Czech
		TOTAL BY EMPLOYEE		45.00 *	14.61 *	
00376	KEHAYOFF FL. 5163	410032	03/10/86	500.00		Bulgarian
		TOTAL BY EMPLOYEE		500.00 *	162.33 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32422	KISS FL.22672	410032	11/11/85	66.00		Hungarian
32422	KISS FL. 22737	410032	12/06/85	54.00		Hungarian
32422	KISS FL. 22801	410032	01/13/86	168.00		Hungarian
		TOTAL BY EMPLOYEE		288.00 *	93.50 *	
25229	KLIMIUK FL.2005	410032	11/11/85	100.00		Polish
		TOTAL BY EMPLOYEE		100.00 *	32.46 *	
32584	KLOSTERMANN FL.5091	410032	11/11/85	870.00		Bulgarian
32584	KLOSTERMANN FL. 5114	410035	12/06/85	600.00		Bulgarian
32584	KLOSTERMANN FL. 5136	410032	01/13/86	750.00		Bulgarian
32584	KLOSTERMANN FL. 5158	410032	02/07/86	600.00		Bulgarian
		TOTAL BY EMPLOYEE		2,820.00 *	915.58 *	
51786	KOCAOGLU FL. BA-93	410035	04/09/86	1,300.00		Kazak/Tatar-Bashkir
51786	KOCAOGLU FL. BA-103	410035	05/07/86	3,100.00		Kazak/Tatar-Bashkir
51786	KOCAOGLU FL. BA-11	410035	06/06/86	3,000.00		Kazak/Tatar-Bashkir
51786	KOCAOGLU BA 116	410035	07/08/86	3,100.00		Kazak/Tatar-Bashkir
51786	KOCAOGLU FL. BA-125	410035	08/07/86	1,700.00		Kazar/Tatar-Bashkir
51786	KOCAOGLU FL-BA-125	401030	09/08/86	1,700.00		Kazak/Tatar-Bashkir
51786	KOCAOGLU NIGAR FL-BA 138	410035	09/30/86	2,500.00		Kazak/Tatar-Bashkir
		TOTAL BY EMPLOYEE		16,400.00 *	5,324.66 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
30776	KOEVES FL. 5164	410032	03/10/86	800.00		Bulgarian
		TOTAL BY EMPLOYEE		800.00 *	259.74 *	
25056	KOLODZIEJSKI FL.2006	410032	11/11/85	350.00		Polish
		TOTAL BY EMPLOYEE		350.00 *	113.63 *	
60571	KONOWALOV FL. OCT.85	410032	11/11/85	150.00		Russian
60571	KONOWALOV FL.1982	410032	11/11/85	240.00		Russian
60571	KONOWALOW FL. NOV.	410032	12/06/85	175.00		Russian
60571	KONOWALOW FL. 198	410032	12/06/85	105.00		Russian
60571	KONOWALOW FL. 1986	410032	01/13/86	200.00		Russian
60571	KONOWALOW FL. JAN.	410032	02/07/86	150.00		Russian
60571	KONOWALOW FL. 1988, 89	410032	02/07/86	320.00		Russian
		TOTAL BY EMPLOYEE		1,340.00 *	435.06 *	
25328	KOPPANY FL. 22673	410035	12/06/85	240.00		Hungarian
		TOTAL BY EMPLOYEE		240.00 *	77.92 *	
25246	KOSTOV FL.5082	410032	11/11/85	1,700.00		Bulgarian
25246	KOSTOV FL. 5106	410032	12/06/85	600.00		Bulgarian
25246	KOSTOV FL. 5128	410032	01/13/86	900.00		Bulgarian
25246	KOSTOV FL. 5150	410032	02/07/86	600.00		Bulgarian
25246	KOSTOV FL-B-5223	410032	09/08/86	600.00		Bulgarian
25246	KOSTOV FL-B-5214	410032	09/08/86	1,400.00		Bulgarian
		TOTAL BY EMPLOYEE		5,800.00 *	1,883.11 *	
25293	KOVACSY FL.22676	410032	11/11/85	1,728.00		Hungarian
25293	KOVACSY FL. 22740	410032	12/06/85	1,220.00		Hungarian
		TOTAL BY EMPLOYEE		2,948.00 *	957.14 *	

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EMPL.      NAME                    -ACCT- M./D./Y.        AMOUNT DM       AMOJNT $

32237 KOVATS FL.15                 410035 11/11/85          160.00                          Czech

                                 TOTAL BY EMPLOYEE          160.00 *       51.94 *

30261 KRATCHOVIL FL. 172           410032 01/13/86        1,000.00                          Czech
30261 KRATOCHVIL FL.39             410032 11/11/85        1,000.00                          Czech
30261 KRATOCHVIL FL. 108           410032 12/06/85        1,000.00                          Czech
30261 KRATOCHVIL FL. 235           410032 02/07/86        1,131.25                          Czech
30261 KRATOCHVIL FL. 301           410032 04/09/86        2,800.00                          Czech

                                 TOTAL BY EMPLOYEE        6,931.25 *    2,250.40 *

32315 KRAVCIK FL.40                410032 11/11/85           45.50                          Czech
32315 KRAVCIK FL. 322              410032 03/10/86          175.50                          Czech
32315 KRAVCIK-FRIEDRICH FL.        410032 12/06/85          142.50                          Czech
32315 KRAVICK FL. 168              410032 01/13/86          136.50                          Czech
32315 KRAVICK-FRIDRICH FL. 236     410032 02/07/86          230.50                          Czech

                                 TOTAL BY EMPLOYEE          730.50 *      237.17 *

25305 KROULIK FL.42                410032 11/11/85           30.00                          Czech

                                 TOTAL BY EMPLOYEE           30.00 *        9.74 *

32437 KRYL FL. 20/86               410032 02/07/86           80.00                          Polish

                                 TOTAL BY EMPLOYEE           80.00 *       25.97 *

32503 KRYLOV FL.45                 410032 11/11/85          299.00                          Czech
32503 KRYLOV FL. 112               410032 12/06/85          942.50                          Czech
32503 KRYLOV FL. 169               410032 01/13/86          435.50                          Czech
32503 KRYLOV FL. 238               410032 02/07/86          341.25                          Czech

                                 TOTAL BY EMPLOYEE        2,018.25 *      655.27 *
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EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25244	KUSIN FL.44	410032	11/11/85	285.00		Czech
		TOTAL BY EMPLOYEE		285.00 *	92.53 *	
25250	LASZAR FL.127	410035	11/11/85	148.40		Hungarian
		TOTAL BY EMPLOYEE		148.40 *	48.18 *	
32669	LEMONIDIS CAROLINE FL 42	410035	08/07/86	1,350.00		English
		TOTAL BY EMPLOYEE		1,350.00 *	438.31 *	
32374	LISZKO FL. 25/86	410032	01/13/86	80.00		Polish
		TOTAL BY EMPLOYEE		80.00 *	25.97 *	
01446	MALASEK FL.49	410032	11/11/85	300.00		Czech
01446	MALASEK FL. 117	410032	12/06/85	168.75		Czech
		TOTAL BY EMPLOYEE		468.75 *	152.19 *	
51595	MARDIROSSIAN FL.3027	410032	11/11/85	1,200.00		Armenian
51595	MARDIROSSIAN FL.BA-13	410035	11/11/85	105.00		Armenian
51595	MARDIROSSIAN FL. 3029	410032	12/06/85	1,320.00		Armenian
51595	MARDIROSSIAN FL. NOV.13	410036	12/06/85	80.00		Armenian
51595	MARDIROSSIAN FL. 3048	410032	01/13/86	1,335.00		Armenian
51595	MARDIROSSIAN FL. JAN.	410036	02/07/86	80.00		Armenian
51595	MARDIROSSIAN FL. 3060	410032	02/07/86	1,260.00		Armenian
51595	MARDIROSSIAN FL. 3074	410032	03/10/86	1,260.00		Armenian
51595	MARDIROSSIAN FL. 3082	410032	04/09/86	930.00		Armenian
		TOTAL BY EMPLOYEE		7,570.00 *	2,457.79 *	
25038	MARTIN FL. 257	410033	02/07/86	1,550.00		Polish
		TOTAL BY EMPLOYEE		1,550.00 *	503.24 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32624	MARTON FL. 22806	410032	02/07/86	18.00		Hungarian
		TOTAL BY EMPLOYEE		18.00 *	5.84 *	
51777	MICHAELI FL, BA-41	410035	12/06/85	3,000.00		Azeri
51777	MICHAELLI FL.BA-19	410035	11/11/85	3,100.00		Azeri
		TOTAL BY EMPLOYEE		6,100.00 *	1,980.51 *	
32495	MOLNAR FL.4088	410033	11/11/85	255.00		Hungarian
32495	MOLNAR FL. 4092	410033	12/06/85	875.00		Hungarian
32495	MOLNAR FL. 4102	410033	02/07/86	145.00		Hungarian
32495	MOLNAR FL. 4106	410033	04/09/86	500.00		Hungarian
		TOTAL BY EMPLOYEE		1,775.00 *	576.29 *	
01398	MOSCHUNA-SION FL.39	410032	11/11/85	600.00		Romanian
01398	MOSCHUNA-SION FL. 108	410032	12/06/85	750.00		Romanian
01398	MOSCHUNA-SION FL. 138	410032	01/13/86	600.00		Romanian
01398	MOSCHUNA-SION FL. 202	410032	02/07/86	600.00		Romanian
01398	MOSCHUNA-SION FL. 243	410032	04/09/86	600.00		Romanian
		TOTAL BY EMPLOYEE		3,150.00 *	1,022.72 *	
60533	NAZAR FL.3187	410032	11/11/85	800.00		Dari
60533	NAZAR FL. 32082	410032	12/06/85	800.00		Dari
60533	NAZAR FL. 3223	410032	01/13/86	800.00		Dari
60533	NAZAR FL 3208	410032	01/30/86	800.00		Dari
60533	NAZAR FL. 3241	410032	02/07/86	800.00		Dari
60533	NAZAR FL. 3251	410032	03/10/86	800.00		Dari
60533	NAZAR FL. 3280,62	410032	05/07/86	1,600.00		Dari
60533	NAZAR FL. 3291	410032	06/06/86	800.00		Dari
60533	NAZAR FL # 3310	410033	07/08/86	800.00		Dari
60533	NAZAR FL-3334	410032	09/09/86	800.00		Dari
60533	NAZAR Z. FL-3354	410032	09/30/86	1,230.00		Dari
60533	NAZAR ZARIF FL 3321	410032	08/07/86	800.00		Dari
		TOTAL BY EMPLOYEE		10,830.00 *	3,516.23 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25287	NEAGU FL.129	410035	11/11/85	1,513.40		Romanian
25287	NEAGU FL. NOV.27,'85	410035	12/06/85	107.80		Romanian
25287	NEAGU FL. 153	410032	01/13/86	2,160.00		Romanian
25287	NEAGU FL. BA-68	410035	02/07/86	179.20		Romanian
		TOTAL BY EMPLOYEE		3,960.40 *	1,285.84 *	
00552	NIKOLAEV FL. 5121	410032	12/06/85	250.00		Bulgarian
		TOTAL BY EMPLOYEE		250.00 *	81.16 *	
00559	NOWAKOWSKA BA-39	410035	12/06/85	359.80		Polish
00559	NOWAKOWSKA FL. 0146	410035	02/07/86	750.40		Polish
		TOTAL BY EMPLOYEE		1,110.20 *	360.45 *	
51653	OGANESSIAN FL. NOV.21	410036	12/06/85	300.00		Armenian
51653	OGANESSIAN FL. DEC.	410032	01/13/86	300.00		Armenian
		TOTAL BY EMPLOYEE		600.00 *	194.80 *	
51894	OLYNYK FL.BA-15-FY-86	410035	11/11/85	772.80		Ukrainian
51894	OLYNYK FL. BA-42-FY-86	410035	12/06/85	1,057.00		Ukrainian
51894	OLYNYK FL. BA-50-FY-86	410035	01/13/86	337.40		Ukrainian
51894	OLYNYK FL. BA-95	410035	04/09/86	1,036.00		Ukrainian
		TOTAL BY EMPLOYEE		3,203.20 *	1,040.00 *	
25209	OSTOJA-KOTKOWSKA FL.	410035	11/11/85	165.20		Polish
25209	OSTOJA-KOTKOWSKA FL.	410035	12/06/85	1,139.20		Polish
25209	OSTOJA-KOTKOWSKA FL.	410035	12/06/85	186.20		Polish
25209	OSTOJA-KOTKOWSKA FL. 65	410035	02/07/86	381.40		Polish
25209	OSTOJA-KOTKOWSKA FL.	410035	05/07/86	2,679.60		Polish
		TOTAL BY EMPLOYEE		4,551.60 *	1,477.79 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51440	OURATADZE FL.BA-11	410035	11/11/85	300.00		Georgian
		TOTAL BY EMPLOYEE		300.00 *	97.40 *	
25257	OUZOUNOVA FL.5089	410032	11/11/85	130.00		Bulgarian
25257	OUZOUNOVA FL. 5113	410032	12/06/85	510.00		Bulgarian
25257	OUZOUNOVA FL. 5135	410032	01/13/86	650.00		Bulgarian
25257	OUZOUNOVA FL. 5157	410032	03/10/86	520.00		Bulgarian
		TOTAL BY EMPLOYEE		1,810.00 *	587.66 *	
25232	PEITCHEV FL. 5099	410032	12/06/85	100.00		Bulgarian
25232	PEITCHEV FL. 5144	410032	02/07/86	100.00		Bulgarian
		TOTAL BY EMPLOYEE		200.00 *	64.93 *	
51249	PEROUANSKY FL. DEC.27	410035	01/13/86	315.00		Russian
51249	PEROUANSKY FL. BA-48	410035	01/13/86	407.40		Russian
51249	PEROUANSKY FL. BA-70	410035	02/07/86	625.80		Russian
		TOTAL BY EMPLOYEE		1,348.20 *	437.72 *	
25116	PETROV FL. 5143	410032	02/07/86	900.00		Bulgarian
		TOTAL BY EMPLOYEE		900.00 *	292.20 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
31344	PIPEV FL. 5162	410032	02/07/86	500.00		Bulgarian
		TOTAL BY EMPLOYEE		500.00 *	162.33 *	
25113	POPOFF FL.5096	410032	11/11/85	750.00		Bulgarian
		TOTAL BY EMPLOYEE		750.00 *	243.50 *	
32471	PRONOBIS FL. 2052	410032	12/06/85	1,360.00		Polish
32471	PRONOBIS FL. 41/86	410032	02/07/86	1,060.00		Polish
32471	PRONOBIS FL. 160	410032	04/09/86	962.00		Polish
32471	PRONOBIS FL. 230	410032	06/06/86	1,464.00		Polish
32471	PRONOBIS P-300	410032	07/08/86	636.00		Polish
32471	PRONOBIS WITOLD FL P-366	410032	08/07/86	732.00		Polish
32471	PRONOBIS FL-P-400	410032	09/08/86	504.00		Polish
		TOTAL BY EMPLOYEE		6,718.00 *	2,181.16 *	
32235	ROSENBUSCH FL. 206	410032	04/09/86	190.00		Polish
		TOTAL BY EMPLOYEE		190.00 *	61.68 *	
31750	ROUBALIK FL. 252	410032	02/07/86	37.50		Czech
		TOTAL BY EMPLOYEE		37.50 *	12.17 *	
25320	SARKANY FL.128	410035	11/11/85	162.40		Hungarian
25320	SARKANY FL.BA-9	410035	11/11/85	158.20		Hungarian
25320	SARKANY FL. BA-109	410035	06/06/86	1,563.80		Hungarian
25320	SARKANY BA-115	410035	07/08/86	1,563.80		Hungarian
		TOTAL BY EMPLOYEE		3,448.20 *	1,119.54 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25105	SCHMIDT FL.120	410035	11/11/85	319.20		Hungarian
25105	SCHMIDT FL.22689	410035	11/11/85	200.00		Hungarian
25105	SCHMIDT FL. BA-51	410035	01/13/86	200.00		Hungarian
25105	SCHMIDT FL. BA-64	410035	02/07/86	200.00		Hungarian
		TOTAL BY EMPLOYEE		919.20 *	298.44 *	
32508	SCHNEIDER FL. 22816	410035	01/13/86	240.00		Hungarian
32508	SCHNEIDER FL. 22878	410035	02/07/86	336.00		Hungarian
32508	SCHNEIDER FL. 22922	410035	04/09/86	900.00		Hungarian
		TOTAL BY EMPLOYEE		1,476.00 *	479.22 *	
32450	SCHUSTER FL. 4093	410033	12/06/85	615.00		Hungarian
32450	SCHUSTER FL. 4097	410035	01/13/86	945.00		Hungarian
32450	SCHUSTER FL. 4103	410033	02/07/86	840.00		Hungarian
32450	SCHUSTER FL. 4107	410033	04/09/86	460.00		
		TOTAL BY EMPLOYEE		2,860.00 *	928.57 *	
51852	SEGO FL-BA-133	401030	09/08/86	3,000.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO FL.BA-20-FY-86	410035	11/11/85	1,600.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO FL. BA-31-FY-86	410035	12/06/85	600.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO FL. BA-72	410035	02/07/86	1,650.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO FL. BA-90	410035	04/09/86	2,200.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO FL. BA 108	410035	06/06/86	2,474.80		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
51852	SEGO STEPHEN FL BA-122	410035	08/07/86	1,500.00		Azeri/Turkmen/Tajik/Uzbek/Kirghiz
		TOTAL BY EMPLOYEE		13,024.80 *	4,228.83 *	
01451	SHAFIR FL. 118	410032	12/06/85	200.00		Romanian
		TOTAL BY EMPLOYEE		200.00 *	64.93 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32319	SLOMKOWSKI FL.2001	410032	11/11/85	230.00		Polish
		TOTAL BY EMPLOYEE		230.00 *	74.67 *	
32603	SNODGRASS FL. OCT.17	410035	11/11/85	930.00		English
32603	SNODGRASS FL. OCT.17	410036	11/11/85	400.00		English
32603	SNODGRASS FL. DEC.18	410035	01/13/86	150.00		English
		TOTAL BY EMPLOYEE		1,480.00 *	480.51 *	
25323	SOBELL FL. 1249	410035	02/07/86	305.00		Czech
		TOTAL BY EMPLOYEE		305.00 *	99.02 *	
25260	SOCOR FL.22	410032	11/11/85	144.00		Romanian
		TOTAL BY EMPLOYEE		144.00 *	46.75 *	
31749	SPETKO FL.62	410032	11/11/85	1,000.00		Czech
		TOTAL BY EMPLOYEE		1,000.00 *	324.67 *	
01589	STANKOVIC FL.22688,560,	410032	11/11/85	120.00		Hungarian
		TOTAL BY EMPLOYEE		120.00 *	38.96 *	
32583	STAYKOV FL.5092	410032	11/11/85	450.00		Bulgarian
32583	STAYKOV FL. 5116	410032	12/06/85	370.00		Bulgarian
32583	STAYKOV FL. 5138	410032	01/13/86	120.00		Bulgarian
32583	STAYKOV FL. 5160	410032	02/07/86	120.00		Bulgarian
		TOTAL BY EMPLOYEE		1,060.00 *	344.15 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25204	STEFANOWSKI FL. 2060	410032	12/06/85	100.00		Polish
		TOTAL BY EMPLOYEE		100.00 *	32.46 *	
25279	STEPANEK FL.60	410032	11/11/85	120.00		Czech
25279	STEPANEK FL. 129	410032	12/06/85	232.50		Czech
25279	STEPANEK FL. 186	410032	01/13/86	85.00		Czech
25279	STEPANEK FL. 258	410032	02/07/86	56.25		Czech
25279	STEPANEK FL. 316	410032	04/09/86	112.50		Czech
		TOTAL BY EMPLOYEE		606.25 *	196.83 *	
25203	STERIOPOL FL. 154	410032	01/13/86	72.00		Romanian
		TOTAL BY EMPLOYEE		72.00 *	23.37 *	
25276	STOLEVA FL.5088	410032	11/11/85	790.00		Bulgarian
		TOTAL BY EMPLOYEE		790.00 *	256.49 *	
25253	SWIDLICKI FL.1999	410032	11/11/85	540.00		Polish
25253	SWIDLICKI FL. 2063	410032	12/06/85	180.00		Polish
25253	SWIDLICKI FL. 50/86	410032	03/10/86	710.00		Polish
		TOTAL BY EMPLOYEE		1,430.00 *	464.28 *	
25263	SZABO DANKO FL BA-136	410035	09/30/86	147.20		Hungarian
25263	SZABO FL.126	410035	11/11/85	137.20		Hungarian
25263	SZABO FL. 22754	410035	12/06/85	189.00		Hungarian
25263	SZABO FL. 22820	410032	01/13/86	868.00		Hungarian
25263	SZABO FL. 22923	410032	04/09/86	487.20		Hungarian
		TOTAL BY EMPLOYEE		1,828.60 *	593.70 *	
32388	TCHAKAROVA FL.5083	410032	11/11/85	280.00		Bulgarian
32388	TCHAKAROVA FL. 5107	410032	12/06/85	280.00		Bulgarian
32388	TCHAKAROVA FL. 5129	410032	01/13/86	210.00		Bulgarian
32388	TCHAKAROVA FL. 5151	410032	02/07/86	280.00		Bulgarian
		TOTAL BY EMPLOYEE		1,050.00 *	340.90 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
32641	THORNTON FL. BA-4	410035	11/11/85	1,872.00		English
		TOTAL BY EMPLOYEE		1,872.00 *	607.79 *	
25254	TOSHEFF FL. 51118	410032	12/06/85	98.00		Bulgarian
25254	TOSHEFF FL. 5140	410035	01/13/86	439.60		Bulgarian
		TOTAL BY EMPLOYEE		537.60 *	174.54 *	
31289	TOTH FL.22696	410032	11/11/85	936.00		Hungarian
31289	TOTH T. FL. 22828	410032	01/13/86	800.00		Hungarian
31289	TOTH TAS FL. 22763	410032	12/06/85	400.00		Hungarian
		TOTAL BY EMPLOYEE		2,136.00 *	693.50 *	
32441	TRACEY FL. 5159	410032	02/07/86	420.00		Bulgarian
		TOTAL BY EMPLOYEE		420.00 *	136.36 *	
32301	TRAYCEV FL. 5115	410032	12/06/85	560.00		Bulgarian
32301	TRAYCEY FL.5093	410032	11/11/85	420.00		Bulgarian
32301	TRACEY FL. 5137	410032	01/13/86	700.00		Bulgarian
		TOTAL BY EMPLOYEE		1,680.00 *	545.45 *	
32280	TRUNK FL. 22829	410035	01/13/86	450.00		Hungarian
32280	TRUNK FL. 22883	410035	03/10/86	150.00		Hungarian
		TOTAL BY EMPLOYEE		600.00 *	194.80 *	
32246	TRZESOWSKI FL.2000	410032	11/11/85	60.00		Polish
		TOTAL BY EMPLOYEE		60.00 *	19.48 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
60207	URBAN FL. BA-29-FY-86	410035	12/06/85	700.00		Belorussian
60207	URBAN FL. BA-62-FY-86	410035	02/07/86	500.00		Belorussian
60207	URBAN FL-BA-131	401030	09/08/86	300.00		Belorussian
		TOTAL BY EMPLOYEE		1,500.00 *	487.01 *	
30034	VARNELYI FL. 22835	410032	02/07/86	42.00		Hungarian
		TOTAL BY EMPLOYEE		42.00 *	13.63 *	
31448	VAYDA FL. 22770	410032	12/06/85	272.00		Hungarian
		TOTAL BY EMPLOYEE		272.00 *	88.31 *	
32266	VINCZE FL.22702	410032	11/11/85	128.00		Hungarian
		TOTAL BY EMPLOYEE		128.00 *	41.55 *	
32384	VOICULESCU FL.23	410032	11/11/85	500.00		Romanian
32384	VOICULESCU FL. 107	410032	12/06/85	375.00		Romanian
32384	VOICULESCU FL. 142	410032	01/13/86	500.00		Romanian
32384	VOICULESCU FL. 241A	410032	03/10/86	500.00		Romanian
		TOTAL BY EMPLOYEE		1,875.00 *	608.76 *	
51913	VOLOHONSKY FL. OCT. 29	410035	11/11/85	119.00		Russian
		TOTAL BY EMPLOYEE		119.00 *	38.63 *	
32256	WOLFE FL. 150	410033	01/13/86	70.00		Romanian
		TOTAL BY EMPLOYEE		70.00 *	22.72 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
40933	ZELENGER FL. 22703	410032	12/06/85	48.00		Russian/Hungarian
		TOTAL BY EMPLOYEE		48.00 *	15.58 *	
51886	ZIELYK FL. NOV.15, 85	410035	12/06/85	186.00		Ukrainian
		TOTAL BY EMPLOYEE		186.00 *	60.38 *	
60539	ZILITINKEVICH FL. BA-15	410035	11/11/85	800.00		Russian
60539	ZILITINKEVICH FL. BA-35	410035	12/06/85	600.00		Russian
60539	ZILITINKEVIC FL. BA-67	410035	02/07/86	400.00		Russian
		TOTAL BY EMPLOYEE		1,800.00 *	584.41 *	
32529	ZVRSKOVEC FL.71	410032	11/11/85	60.00		Czech
32529	ZVRSKOVEC FL. 323	410032	03/10/86	70.00		Czech
		TOTAL BY EMPLOYEE		130.00 *	42.20 *	
40899	CINCA SYLVIA FL	410032	10/15/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	10/31/85	-	330.00	Romanian
40899	CINCA SYLVIA FL	410032	11/15/85	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	11/30/85	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032	12/15/85	-	330.00	Romanian
40899	CINCA SYLVIA FL	410032	12/31/85	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032	1/15/86	-	330.00	Romanian
40899	CINCA SYLVIA FL	410032	1/31/86	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032	2/15/86	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032	2/28/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	3/15/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	4/15/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	4/30/86	-	330.00	Romanian
40899	CINCA SYLVIA FL	410032	5/31/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	6/15/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032	6/30/86	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032	7/15/86	-	110.00	Romanian

EMPL.	NAME	-ACCT- M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
40899	CINCA SYLVIA FL	410032 7/31/86	-	110.00	Romanian
40899	CINCA SYLVIA FL	410032 8/15/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032 8/30/86	-	220.00	Romanian
40899	CINCA SYLVIA FL	410032 9/30/86	-	110.00	Romanian
		TOTAL BY EMPLOYEE	-	4,180.00 *	
		TOTAL AMOUNTS:	302,824.60 *	102,499.00 *	

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EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51881	ABASS SAYID FL03394	410032	12/08/86	400.00		Dari
51881	ABASS SAYID FL03367	410032	12/08/86	380.00		Dari
51881	ABBAS SAYID FL. 3418	410032	01/12/87	100.00		Dari
		TOTAL BY EMPLOYEE		880.00 *	347.82 *	
51006	ALLIS DAVID FL-BA 13	410035	12/08/86	1,222.40		Belorussian
		TOTAL BY EMPLOYEE		1,222.40 *	483.16 *	
60526	ATSIZ BUGRA FL-BA 40	410035	02/09/87	1,000.00		Turkmen
60526	ATSIZ BUGRA BA-4	410035	11/07/86	3,100.00		Turkmen
60526	ATSIZ BUGRA FL-BA-19	410035	12/08/86	3,000.00		Turkmen
60526	ATSIZ BUGRA FL-BA 31	410035	01/12/87	1,500.00		Turkmen
		TOTAL BY EMPLOYEE		8,600.00 *	3,399.20 *	
51825	CARLSON M. FL - BA 3	410035	02/09/87	1,300.00		Georgian
		TOTAL BY EMPLOYEE		1,300.00 *	513.83 *	
51744	DANIEL M. FL - 12.1	410035	02/09/87	125.00		Tajik
		TOTAL BY EMPLOYEE		125.00 *	49.40 *	
51461	DELON ROY FL 3180	410035	12/12/86	250.00		Polish
		TOTAL BY EMPLOYEE		250.00 *	98.81 *	
32480	FAKHR-MUSSAVI SUSANNE FL-	410035	12/08/86	582.40		Tajik
		TOTAL BY EMPLOYEE		582.40 *	230.19 *	
51850	FREYDKIN V. FL - 12.1	410035	02/09/87	175.00		Belorussian
51850	FREYDKIN BASIL FL-BA-17	410035	12/08/86	1,173.60		Belorussian
		TOTAL BY EMPLOYEE		1,348.60 *	533.04 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51834	GIRNIUS SAULIUS FL-BA-15	410035	12/08/86	8,700.00		Latvian/Lithuanian
51834	GIRNIUS S. FL - 27.0	410035	02/09/87	1,136.00		Latvian/Lithuanian
	TOTAL BY EMPLOYEE			9,836.00 *	3,887.74 *	
25245	HEJL FL-CS 715	410032	11/07/86	1,200.00		Czech
25245	HEJL FL-CS 638	410032	11/07/86	1,200.00		Czech
	TOTAL BY EMPLOYEE			2,400.00 *	948.61 *	
51902	ILVES T. BA-6	410035	11/07/86	2,000.00		Estonian
51902	ILVES THOOMAS FL-BA-18	410035	12/08/86	2,000.00		Estonian
	TOTAL BY EMPLOYEE			4,000.00 *	1,581.02 *	
60514	KIRCHELY JAKOB FL-17.12.8	410035	02/09/87	175.00		Georgian
	TOTAL BY EMPLOYEE			175.00 *	69.16 *	
32677	KISTENFEGER M. FL-BA-10	410035	11/07/86	560.00		Romanian
	TOTAL BY EMPLOYEE			560.00 *	221.34 *	
60601	KOCAOGLU NIGAR FL-BA 28	410035	01/12/87	3,100.00		Kazak
	TOTAL BY EMPLOYEE			3,100.00 *	1,225.29 *	
60571	KONOWALOW W. FLU 2002	410032	11/07/86	290.00		Belorussian
60571	KONOWALOW W. FLB 2000	410032	11/07/86	360.00		Belorussian
	TOTAL BY EMPLOYEE			650.00 *	256.91 *	
25246	KOSTOV VLADIMIR FL-B-5244	410032	12/08/86	800.00		Bulgarian
25246	KOSTOV VLADIMIR FL-B-5240	410032	12/08/86	1,800.00		Bulgarian
25246	KOSTOV VLADIMIR FL-B-5254	410032	01/12/87	800.00		Bulgarian
25246	KOSTOV V. FL - B-52	410032	02/09/87	600.00		
	TOTAL BY EMPLOYEE			4,000.00 *	1,581.02 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
51863	LEVIN A. FL - 17.1	410035	02/09/87	175.00		Russian
	TOTAL BY EMPLOYEE			175.00 *	69.16 *	
51922	MACKEVICIUS FL - 12.1	410035	02/09/87	150.00		Lithuanian
	TOTAL BY EMPLOYEE			150.00 *	59.28 *	
60174	MURATLI MURAT FL-17.12.86	410035	02/09/87	150.00		Azeri
	TOTAL BY EMPLOYEE			150.00 *	59.28 *	
60533	NAZAR Z. FL # 3368	410032	11/07/86	490.00		Dari
60533	NAZAR Z. FL-3417	410032	01/12/87	290.00		Dari
60533	NAZAR ZARIF FL#3402	410032	12/08/86	440.00		Dari
	TOTAL BY EMPLOYEE			1,220.00 *	482.21 *	
25287	NEAGU GABRIEL FL-BA-11	410035	12/08/86	1,158.40		Romanian
	TOTAL BY EMPLOYEE			1,158.40 *	457.86 *	
60527	OEZGEN NOV.	410032	02/13/87	125.00		Kirghiz
	TOTAL BY EMPLOYEE			125.00 *	49.40 *	
51653	OGANESSIAN E. FL - 12.1	410035	02/09/87	150.00		Armenian
	TOTAL BY EMPLOYEE			150.00 *	59.28 *	
51249	PEROUANSKY A.SR FL-BA 5	410035	11/07/86	145.60		Russian
	TOTAL BY EMPLOYEE			145.60 *	57.54 *	
32471	PRONOBIS WITOLD P-456	410032	11/07/86	252.00		Polish
32471	PRONOBIS W. P-402	410032	11/07/86	552.00		Polish
	TOTAL BY EMPLOYEE			804.00 *	317.78 *	

EMPL.	NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
25320	SARKANY A. FL - BA-4	410035	02/09/87	2,957.40		Hungarian
	TOTAL BY EMPLOYEE			2,957.40 *	1,168.93 *	
60430	SCHWARZ EGIL FL-12.12.86	410035	02/09/87	150.00		Latvian
	TOTAL BY EMPLOYEE			150.00 *	59.28 *	
51852	SEGO S. FL - 14-3	410035	02/09/87	3,693.60		Azeri/Turkmen/Dari
51852	SEGO STEVE FL-BA-21	410035	12/08/86	2,265.60		Azeri/Turkmen/Dari
51852	SEGO STEVE FL-BA 30	410035	01/12/87	2,000.00		Azeri/Turkmen/Dari
	TOTAL BY EMPLOYEE			7,959.20 *	3,145.92 *	
60207	URBAN LARISSA BA-3	410035	11/07/86	200.00		Belorussian
	TOTAL BY EMPLOYEE			200.00 *	79.05 *	
40933	ZELENGER L. FL - 12-1	410035	02/09/87	150.00		Russian
	TOTAL BY EMPLOYEE			150.00 *	59.28 *	
40899	CINCA SILVIA	410032	02/15/87		300.00	Romanian
	TOTAL BY EMPLOYEE				300.00	
	TOTAL AMOUNTS:			54,524.00	21,850.79	

FREELANCE - FY 1986; RELATIVES OF EMPLOYEES

NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
ABDULKADIROV, M.	410032	04/30/86	600.00		GEORGIAN
ABDULKADIROV, M.	410032	05/26/86	600.00		GEORGIAN
ABDULKADIROV, M.	410032	06/25/86	750.00		GEORGIAN
ABDULKADIROV, M.	410032	07/30/86	600.00		GEORGIAN
ABDULKADIROV, M.	410032	08/26/86	600.00		GEORGIAN
ABDULKADIROV, M.	410032	09/26/86	750.00		GEORGIAN
	TOTAL		3,900.00	1,266.23 *	
AGI, AISCHE	410035	10/29/85	942.00		TATAR-BASHKIR
AGI, AISCHE	410035	12/03/85	353.25		TATAR-BASHKIR
	TOTAL		1,295.25 *	420.54 *	
CERKELIUNAS, R.	410032	11/15/85	285.00		LITHUANIAN
CERKELIUNAS, R.	410032	11/29/85	645.00		LITHUANIAN
CERKELIUNAS, R.	410032	02/12/86	480.00		LITHUANIAN
	TOTAL		1,410.00	457.79 *	
CSABUDA-KALNICZKY, I.	410035	10/25/85	5,146.05		HUNGARIAN
CSABUDA-KALNICZKY, I.	410035	11/26/85	5,146.05		HUNGARIAN
	TOTAL		10,292.10	3,341.59 *	

NAME	-ACCT-	M./D./Y	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
FALTIS, JRINA	410032	01/28/86	320.00		CZECH
FALTIS, JRINA	410032	04/23/86	160.00		CZECH
FALTIS, JRINA	410032	05/14/86	160.00		CZECH
FALTIS, JRINA	410032	07/17/86	200.00		CZECH
FALTIS, JRINA	410032	09/29/86	160.00		CZECH
	TOTAL		1,000.00 *	324.68 *	
FRANK, V.	410035	11/14/85	397.60		RUSSIAN
FRANK, V.	410035	11/29/85	392.00		RUSSIAN
FRANK, V.	410035	12/17/85	68.60		RUSSIAN
	TOTAL		858.20	278.64	
GERSTEIN, LARISSA	410033	11/04/85	2,650.51		RUSSIAN
GERSTEIN, LARISSA	410033	12/04/85	1,178.00		RUSSIAN
	TOTAL		3,828.51	1,243.02 *	
GOLAN, NUNU	410033	10/29/85	400.00		GEORGIAN
GOLAN, NUNU	410033	12/04/85	400.00		GEORGIAN
	TOTAL		800.00	259.74 *	
KOLODZIEJSKA, S.	410036	10/24/85	1,765.01		POLISH
KOLODZIEJSKA, S.	410036	11/27/85	3,174.51		POLISH
KOLODZIEJSKA, S.	410036	12/23/85	3,003.02		POLISH
	TOTAL		7,942.54	2,578.75 *	

NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
KRZECZUNOWICZ, V.	410036	12/19/85	3,451.52		POLISH
KRZECZUNOWICZ, V.	410036	12/17/85	693.47		POLISH
	TOTAL		4,144.99	1,345.78 *	
LEVIN, ERNST	410032	01/29/86	150.00		RUSSIAN
LEVIN, ERNST	410032	03/10/86	125.00		RUSSIAN
LEVIN, ERNST	410032	09/30/86	315.00		RUSSIAN
	TOTAL		590.00	191.56 *	
MIERZANOWSKA, D.	410033	12/30/85	3,576.00		POLISH
	TOTAL		3,576.00	1,161.04 *	
MORUSS-WIEST, I.	410033	11/06/85	170.00		LATVIAN
MORUSS-WIEST, I.	410033	11/29/85	300.00		LATVIAN
MORUSS-WIEST, I.	410033	12/19/85	250.00		LATVIAN
	TOTAL		720.00	233.77 *	
NAJDER, HALINA	410035	11/25/85	308.00		POLISH
	TOTAL		308.00	100.00 *	
NEMEC, EVE	410035	11/22/85	581.00		CZECH
	TOTAL		581.00	188.64	
NEMEC, JIRI	410032	02/05/85	1,065.00		CZECH
	TOTAL		1,065.00	345.78	

NAME	-ACCT- M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
ROUBALIK, EVA	410032 05/05/86	40.00		CZECH
ROUBALIK, EVA	410032 07/18/86	80.00		CZECH
	TOTAL	120.00	38.96 *	
ROUBALIKOVA, E.	410032 01/30/86	40.00		CZECH
ROUBALIKOVA, E.	410032 05/05/86	80.00		CZECH
ROUBALIKOVA, E.	410032 07/18/86	80.00		CZECH
	TOTAL	200.00	64.94 *	
SCHULZ, MARTIN	410032 10/28/85	3,267.33		CZECH
SCHULZ, MARTIN	410036 10/28/85	2,669.88		CZECH
SCHULZ, MARTIN	410032 11/26/85	3,044.60		CZECH
SCHULZ, MARTIN	410036 11/26/85	1,686.24		CZECH
SCHULZ, MARTIN	410032 12/18/85	2,440.00		CZECH
SCHULZ, MARTIN	410032 01/27/86	2,400.00		CZECH
SCHULZ, MARTIN	410032 02/25/86	3,433.75		CZECH
SCHULZ, MARTIN	410032 03/19/86	2,787.50		CZECH
SCHULZ, MARTIN	410032 04/24/86	3,000.00		CZECH
SCHULZ, MARTIN	410032 05/22/86	3,080.00		CZECH
SCHULZ, MARTIN	410032 06/30/86	2,720.00		CZECH
SCHULZ, MARTIN	410032 07/18/86	3,120.00		CZECH
SCHULZ, MARTIN	410032 08/14/86	1,850.00		CZECH
SCHULZ, MARTIN	410032 09/29/86	2,650.00		CZECH
	TOTAL	38,149.30	12,386.14 *	

NAME	-ACCT-	M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
VASLEF, IRENE	410035	11/06/85	1,251.60		HUNGARIAN
VASLEF, IRENE	410035	11/12/85	2,315.87		HUNGARIAN
VASLEF, IRENE	410035	12/17/85	667.23		HUNGARIAN
	TOTAL		4,234.70	1,374.90 *	
VASSILEV, KIRIL	410035	11/05/85	888.74		BULGARIAN
VASSILEV, KIRIL	410035	12/05/85	1,057.50		BULGARIAN
	TOTAL		1,946.24	631.90 *	
VON SCHLIPPE, M.	410036	11/08/85	1,335.00		RUSSIAN
VON SCHLIPPE, M.	410036	11/26/85	450.00		RUSSIAN
VON SCHLIPPE, M.	410036	12/23/85	1,245.00		RUSSIAN
VON SCHLIPPE, M.	410036	04/09/86	990.00		RUSSIAN
	TOTAL		4,020.00	1,305.19 *	
WACHOWIAK, MARIA	410033	10/30/85	2,671.70		POLISH
WACHOWIAK, MARIA	410036	11/29/85	2,238.20		POLISH
WACHOWIAK, MARIA	410036	12/30/85	3,392.64		POLISH
	TOTAL		8,302.54	2,695.63 *	
WALLNER, H.	410035	10/25/85	3,641.10		KAZAK/KIRGHIZ
WALLNER, H.	410035	11/25/85	2,472.75		KAZAK/KIRGHIZ
WALLNER, H.	410035	12/06/85	3,532.50		KAZAK/KIRGHIZ
	TOTAL		9,646.35	3,131.93 *	

NAME	-ACCT- M./D./Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
WANTULA, YVONNE	410036 10/28/85	1,101.46		POLISH
WANTULA, YVONNE	410036 12/01/85	2,596.30		POLISH
WANTULA, YVONNE	410036 01/02/86	2,674.98		POLISH
	TOTAL	6,372.74	2,069.07 *	
	TOTAL AMOUNTS	115,303.46	37,436.21 *	

FREELANCE - FY 1987; RELATIVES OF EMPLOYEES

NAME	-ACCT- M./D/.Y.	AMOUNT DM	AMOUNT $	LANGUAGE SKILL
ABDULKADIROV, M.	410032 10/29/86	600.00		GEORGIAN
ABDULKADIROV, M.	410032 12/04/86	750.00		GEORGIAN
ABDULKADIROV, M.	410032 01/02/87	750.00		GEORGIAN
ABDULKADIROV, M.	410032 01/22/87	600.00		GEORGIAN
ABDULKADIROV, M.	410032 02/22/87	600.00		GEORGIAN
	TOTAL	3,300.00 *	1,304.35 *	
FALTIS, JRINA3180	410032 12/30/86	320.00		CZECH
	TOTAL	320.00 *	126.48 *	
NEMEC, JIRI	410032 10/31/86	65.00		CZECH
NEMEC, JIRI	410032 02/20/87	150.00		CZECH
	TOTAL	215.00 *	84.98 *	
ROUBALIK, EVA	410032 01/07/87	40.00		CZECH
ROUBALIK, EVA	410032 01/22/87	40.00		CZECH
	TOTAL	80.00 *	31.62 *	
SADOWSKA, RAISSA	410032 01/28/87	175.00		RUSSIAN
	TOTAL	175.00 *	69.17 *	
SCHULZ, MARTIN	410032 10/27/86	1,860.00		CZECH
SCHULZ, MARTIN	410032 11/25/86	1,884.50		CZECH
SCHULZ, MARTIN	410032 12/22/86	2,050.00		CZECH
SCHULZ, MARTIN	410032 01/22/87	2,056.25		CZECH
SCHULZ, MARTIN	410032 02/18/87	1,800.00		CZECH
	TOTAL	9,650.75 *	3,814.53 *	
	TOTAL AMOUNTS	13,740.75 *	5,431.13 *	

BIB PERSONNEL

The BIB budget justification shows 10 "full-time permanent positions" at $493,000 and 1 "other than full-time permanent position" at $92,000 for fiscal year 1988.

Question 1:

What is the staffing structure of the BIB staff? Have the senior level staff positions been upgraded from GS-15 to the SES level? Weren't all the senior level positions except the Executive Director position downgraded in the last two years to a GS-15 level in response to a June 1986 GAO report?

Answer:

The current staffing of the Board for International Broadcasting includes:

Executive Director, SES
Deputy Executive Director and Director of Program Evaluation, SES
Program Evaluation Officer, SES (incumbent only)
Director of Engineering, SES
Financial Manager, GS-15
Budget Analyst, GS-11
Administrative Assistant, GS-11
Secretary, GS-8
Receptionist, GS-5
and, beginning in FY 1988:
Special Projects Officer, GS-9

When the BIB was established, it was expected to serve on a part-time basis. Congress authorized a full-time staff, drawn from the competitive service, to provide continuity and carry out the day-to-day oversight of RFE/RL, assisting the Board with its five major functions, as identified in Section 4 of the Board for International Broadcasting Act of 1973, as amended:

-- to review and evaluate the mission and operation of RFE/RL, Inc., and to assess the quality, effectiveness and professional integrity of RFE/RL's broadcasts;

-- to encourage the most efficient utilization of available resources by RFE/RL, Inc., and to identify areas in which the operations of RFE/RL may be made more efficient and economical.

-- to develop and apply financial procedures and to make audits of RFE/RL to assure that grants are applied in accordance with the purposes for which they are made;

-- to develop and apply evaluative procedures to assure that grants are applied in a manner not inconsistent with the broad foreign policy objectives of the USG.

In order to carry out these and other responsibilities, which require a high level of experience and expertise, the BIB staff has, since its inception, included a number of high-graded positions, as indicated on the list above.

The June, 1985, GAO report, "Improved Oversight Can Reduce Broadcast Violations At Radio Free Europe/Radio Liberty," did not recommend downgrading all senior level positions except the Executive Director. That report did recommend that the BIB "determine the role of the BIB's staff in fulfilling the federal oversight responsibility" and stated that "without doing so, the need to maintain such senior staff is questionable." A concurrent OPM audit of the activities of the staff recommended that the senior positions be downgraded when the incumbents left, due in great part to the lack of clearly defined staff roles.

Since June, 1985, four of the five senior staff positions have been filled with new employees. The Executive Director is SES, the Deputy Executive Director, a newly created position, and the Director of Engineering positions are also SES, and the Financial Manager is at the GS-15 level.

Since the GAO report was issued, the new Chairman of BIB, Malcolm S. Forbes, Jr., has clearly defined the role of the BIB staff in overseeing the work of RFE/RL, and has delegated responsibility to the senior staff to fulfill specific oversight functions. These activities of the BIB staff are regularly coordinated with the Chairman and other Board members.

Question 2:

Would you explain the need for the 10 "full-time positions" and the justification for what appears to be a number of high-graded positions?

Answer:

Chairman Forbes, in keeping with the intent and spirit of the Pell amendment, has directed the BIB staff to coordinate the Board's affairs on a day-to-day basis. With guidance from the Board, the senior staff has maintained active oversight of the functions of RFE/RL. The senior staffers of the BIB interact almost daily with their counterparts at RFE/RL, Inc: the Executive Vice-President for Programs and Policy, the Vice-President/Treasurer, the Vice-President, Engineering, the Vice-President, Management, and the Directors of RFE and RL. The Board feels that proper oversight of a complex organization of over 1700 personnel, including several Vice-Presidents, fully justifies the existing staffing structure. Also, the BIB staff deals regularly with Congress, OMB, the NSC, the State Department, and other executive branch agencies. It has taken the lead in international negotiations which are part of the overall modernization program of RFE/RL. The workload of the BIB staff has, accordingly, greatly increased in the past year. Several support staff have been paid overtime, and outside temporary assistance has been required on numerous occasions. The addition of one position in FY 1988 will help alleviate this significantly increased workload. The BIB's budget request does not include any funds for this new position. It will be funded by savings in other areas.

Question 3:

Would you explain the one "other than full-time permanent position" and the justification for the costs?

Answer:

This position includes the hours worked by the nine Board members. Compensation for the Board members is defined in Section 3(b)(5) of the Board for International Broadcasting Act of 1973, as amended.

Question 4:

GAO also reported that there was a need for the Board to determine and clarify the role of he BIB staff in fulfilling the federal oversight responsibilities. Has the Board issued written instructions and guidance on what it expects the staff to do in the performance of the oversight function?

Answer:

In its June 1985 report, GAO recommended that the Chairman of the BIB, together with the Board, determine the role of the BIB's staff in fulfilling the federal oversight responsibility. The new senior staff has been in daily contact with Chairman Forbes, and in regular contact with the other Board members. The new senior staff receives oral guidance from the Chairman daily and coordinates its oversight work with him and the other Board members as required. Also, the Chairman has issued a written directive instructing the BIB staff to take the lead in the organization of the Board meetings in the U.S. The BIB staff has properly discharged its Congressionally-mandated responsibility of overseeing RFE/RL activities, contracting with outside specialists to evaluate RFE/RL programming, and coordinating the work of BIB with other government agencies and offices.

BIB OTHER SERVICES

The budget justification requests $406,000 for "Other services" which represents about one-third of the $1,237,000 requested to operate the BIB.

Question 1:

What other services will the Board procure?

Answer:

Over half of the $406,000 budgeted for "Other services" covers contracts for specialists who assist with oversight activities required of the BIB. BIB contracts with Arthur Anderson, Inc. to perform an annual audit of RFE/RL, Inc. to assure that grants are applied in accordance with the purpose for which such grants are made and that funds are spent appropriately. In addition, academic, technical, and broadcast experts provide independent program evaluations and perform specific technical projects, assisting the Board with its mandated oversight functions. The remainder of the amount budgeted for "Other services" covers a variety of supplies and services including office equipment agreements, security arrangements, official representation, delivery services, office machine training, and other miscellaneous services.

Question 2:

Does any of the $1,237,000 that the Board is requesting provide for consultants? If so, for what purposes will the consultants be employed and how will they be selected? Are you currently using consultants? If so, what services are they performing?

Answer:

The Board does not currently plan to employ consultants in FY 1988. However, included in the BIB's FY 1988 request is funding for contracts with specialists for independent broadcast programs evaluations and for special projects in the engineering area. Currently, one personnel consultant is employed by BIB on an intermittent basis.

SECURITY

Providing for the physical security of RFE/RL facilities and equipment must be an extremely demanding task.

Question 1:

How many RFE/RL employees are involved in security functions?

Answer:

There are 12 employees assigned to Security functions in Munich to protect the English Garden Broadcast Center and the outlying Arabella office complex: Director and Assistant Director of Security, one office assistant, one day and one night guard supervisor and seven guard/receptionists. A contract guard service provides the additional security required.

The Pals transmitter site in Spain has 12 employee guards. A contract guard service provides additional security.

At all transmitter sites in West Germany (Holzkirchen, Biblis, Lampertheim and Schleissheim) and in Portugal (RARET) security is provided totally by contract guard service.

Question 2:

What security functions are performed by contract personnel?

Answer:

Contract guard services primarily provide exterior security protection - gate and parking lot control - perimeter patrols. At the Munich Broadcast Center specially trained contract guards staff the 24-hour security control center, operating all electronic security equipment (alarm systems, television monitor control, communications, etc.). The security control centers at all outlying transmitter sites are staffed as well by contract guards.

In Portugal, there are contract guards used to control access to the Lisbon office building. A combination of contract guards and a Portuguese National Guard unit provides security at the Gloria transmitter site.

Question 3:

How much did security cost in FY 86?

How much is estimated in FY 87 and FY 88?

Answer:

The FY 1986 operating costs for security services at all RFE/RL locations amounted to $2,224,421 at the FY 1986 budget rate of DM 3.08 to the Dollar. Additional funding of $2,075,000 was made available in FY 1986 for one-time security enhancements at the Munich Headquarters building and at the transmitter sites in West Germany and Iberia.

The FY 1987 estimate for security services is $2,782,000 at DM 2.53 to the Dollar. The FY 1988 budget request includes $2,938,000 for on-going security services and $750,000 for continuation of the security enhancements program at DM 2.53 to the Dollar.

TRANSMITTERS

Since 1974, RFE/RL transmitter power has doubled. There have been several technical improvement efforts. RFE/RL is now in the middle of a $77.2 million transmitter facilities modernization.

Question 1:

How is the current modernization effort different from prior efforts? Is the current effort adding new and better facilities or does this effort represent patchwork of old and outdated facilities? Would you highlight the completed technical improvements, the current improvements, and the improvements still to come? Are the improvements being made at sites that are secured with long-term lease agreements? Would you provide a list of the improvement planned or made at each site, the cost, and the terms of the lease agreements?

Answer:

The current modernization plan differs from past programs in that it is based on new technical standards. The technical standards applied in 1975 resulted in a transmitting network which cannot deliver signal levels needed in today's environment. Further, it was a gridlocked system which had no flexibility for enhancing a service such as was required in 1981 when a need arose in Poland to counteract increased jamming of the Polish service. Finally, past modernization efforts concentrated principally on replacing old transmitting equipment.

The current plan is based on a standard for restoring and improving RFE/RL signals to provide a channel effectiveness of at least 50% for all jammed services and 90% for unjammed services. (Fifty percent effectivness is considered a reliable broadcast service in jammed environments). This plan would also provide flexibility in the distribution of transmitters among language services during times of international crises.

Based on mathematical models simulating the relationship between the combined power of RFE/RL transmitters and the combined power of the jammers, it can be demonstrated that to achieve the new goals for channel effectiveness a minimum of 1,700 kW of total transmitter power on the unjammed networks is required. Table 1 shows the current distribution of transmitters per network and the distribution necessary in order to restore RFE/RL signal quality to reasonable levels of audibility.

In the FY 87 budget request, OMB approved a plan for refurbishing RFE/RL's existing facilities in Germany and Portugal at a cost of $77.2 million. The OMB- approved plan did not include the complete refurbishment of the facility in Spain, because RFE/RL does not have a long-term lease for this facility.

RFE/RL's comprehensive modernization plan also calls for constructing a new station in Israel for coverage of Soviet Central Asia and for establishing a new station in Europe for enhancing its signals in Eastern Europe and the Soviet Union.

The total cost of the RFE/RL modernization program is shown in Table 1. The distribution of these new transmitters is shown in Table 2.

Funds for the first phase of the $77.2 million modernization program - the refurbishment of existing transmitter facilities in West Germany and Iberia - were granted in FY 85/86 in the amount of $16.9 million. In FY 86, $13.6 million was obligated for the purchase of 9-250 kW transmitters. One of these nine transmitters is being installed in Spain and should be in operation by June of 1987. The delivery of the remaining eight transmitters for installation in Portugal is scheduled to begin in July, 1987. Work has already begun in preparation for the installation of this equipment. In FY 87, $18.3 million was appropriated for continuation of the first phase of modernization. Responses to requests for bids for purchasing switch matrices for Biblis, Lampertheim and Gloria are due in early April 1987. An order in the amount of $18.0 million (the estimated cost for the three matrices and their installation) is projected to be placed at the end of April 1987.

The improvements being made at existing facilities include: replacing all remaining obsolete underpowered transmitters with new higher-powered units, replacing unshielded switch matrices, upgrading of antenna systems and other related refurbishments. (See Table 2)
RFE/RL transmitting station lease agreements are as follows:

Germany

Biblis: Fifty year lease ending 2001.
Annual Cost DM 19,433

Holzkirchen: Initial lease expired 8/3/60,
but is automatically extended each year.
Annual Cost DM 14,659

Lampertheim: Twenty-five year lease,
expires 2003.
Annual Cost DM 29,400

Iberia

Pals, Spain: Lease expired 3/23/60.
RFE/RL amicably continues operating this facility on a year-to-year basis.
Annual Cost $285,000

Gloria, Portugal: Operates on a 15-year contract which ends 2/14/1992.

TABLE 1

PRESENT AND FUTURE DISTRIBUTION OF TRANSMITTERS AND POWER ASSIGNED TO EACH RFE/RL LANGUAGE NETWORK

Language Network	Present Transmitter Distribution & Power		Modernized Transmitter Distribution & Power	
	No. Trans.	Total Power	No. Trans.	Total Power
1. European Russian (i)	14	2600 kW	15	5450 kW
2. Polish	4	700 kW	5	1750 kW
3. Romanian	3	600 kW	4	900 kW
4. Czech - Slovak	4	700 kW	5	1750 kW
5. Hungarian	3	450 kW	4	900 kW
6. Ukrainian (ii)	5	650 kW	6	1700 kW
7. Bulgarian	4	700 kW	5	1750 kW
8. Caucasian	4	550 kW	5	1900 kW
9. Asiatic Nationalities (iii)			8	4000 kW
10. Baltic & Belorussian	4	550 kW	7	1750 kW
TOTAL	45	7500 kW	64	21850 kW (iv)

(i) This service consists of four technical networks - i.e., north, central, and south sectors of European Russia, and an Eastern European sector for broadcasting to Soviet troops.

(ii) The Ukrainian service presently shares transmitters with the Central Asian services. After modernization is completed and a new facility in Israel is operational, the Ukrainian service will no longer have restrictions on the hours of its broadcasts due to sharing transmitters with other services.

(iii) Transmitters in this service are shared currently with the Ukrainian service. When the new site in Israel is operational, this service will be comprised of two technical networks covering the north and south sectors of Central Asia.

(iv) 21,850 kW represents a boost of 14,350 kW over the present system. Of this 14,350 kW, 4,000 kW is for providing a new one-hour service to Central Asia from a new site in Israel; 7,500 kW is for enhancing existing coverage from two sites in Europe; and 2,850 is for boosting power at existing stations to restore RFE/RL channel effectiveness at the level it once had some 15 years ago.

TABLE 2

DISTRIBUTION OF NEW TRANSMITTERS
AS PLANNED IN MODERNIZATION PROGRAM

Project	Location	Transmitter No.	Transmitter Power	Costs $ (Millions)
1.	*Gloria, Portugal	8	250 kW	23.00
2.	*Maxoqueira, Portugal	6	500 kW	42.75
3.	*Biblis, FRG	1	100 kW	5.00
4.	*Lampertheim, FRG	2	100 kW	6.50
5.	Pals, Spain	2 4	500 kW 250 kW	35.00
6.	*Israel	10	500 kW	150.00
7.	New European	9	500 kW	125.00
TOTAL		42		387.25

*Indicates OMB previously approved project.

Question 2:

Have the improvements to date resulted in a stronger signal that is able to penetrate the jamming? Since 1974, has there been a significant increase in listenership?

Answer:

Improvements since 1975 have resulted in a stronger signal. However, there has also been increased congestion in the shortwave bands caused by more broadcasters using high power transmitters and increased jamming. The completion of our total modernization program, which includes installation of 500 kW transmitters, will strengthen our signals to the point where we will be better able to penetrate jamming.

In spite of increased jamming and increased congestion in the shortwave bands, the latest surveys reveal that RFE continues to be the most popular Western broadcasting station in Eastern Europe. Fifty-two percent of the East European adult population listens regularly to RFE despite jamming. The past six years have revealed a modest increase in RL listenership, in the USSR and the Baltic states where 18 to 26 million people are estimated to tune in each week.

Question 3:

Why does the modernization of the Portuguese transmitters increase the license fee? Has this happened at other facilities?

Answer:

The license fee is based on total transmitter power. When new higher-powered transmitters are used to replace existing lower-powered transmitters, the fee goes up by a proportional amount.

The license fees for all three stations in Germany are also based on total transmitter power.

Question 4:

Is the Government of Spain's efforts to reduce U.S. military presence having any impact on the future of RFE/RL's transmitter facilities in Spain?

Answer:

RFE/RL continues to have good relations with the officials of the Spanish government responsible for its operation. To date, RFE/RL has had no indications that the Spanish Government links the Pals transmitting station with the U.S. military presence in Spain.

RELOCATION OF RFE/RL TO U.S.A.

In order to determine whether or not it would be economically prudent to move most of the programming and administration operation from Munich to the United States we ask that you provide the following information:

Question 1:

Identify the RFE/RL functions that must remain "in-country" from those that can be relocated.

Answer:

RFE/RL are surrogate radio services broadcasting to and about their audiences. This unique mission demands close contact with and intimate knowledge of the audience. Proximity to the audience is essential, both for the information gained about events, issues, and personalities in the target countries and for feedback from those we reach with our broadcasts. RFE/RL provide twenty-four hour monitoring of the official radios of Eastern Europe and the Soviet Union, something that cannot be done from a U.S. location. RFE/RL are centers of research and scholarship about Eastern Europe and the Soviet Union. They house enormous archives and libraries that are unmatched anywhere in the West and cannot be replicated. We believe these are compelling reasons for maintaining programming and administrative operations in Munich. Nevertheless, in response to questions from Congress about the cost and effect of a move to the U.S. a subcommittee of the BIB was recently appointed to evaluate all aspects of a relocation of Radio Liberty to the United States. The subcommittee expects to complete its work this spring and make a report to the full BIB. In the meantime, one shift of the Russian Service news broadcasting has been transferred to Washington, D.C. Most experts agree that RFE should not be relocated; they are divided as to whether RL should be relocated. The subcommittee is presently grappling with this question and has not yet made a determination. The responses to questions 2 through 6 of this section are predicated on a hypothetical relocation of RL in its entirety and are based on preliminary estimates provided by RFE/RL management.

Question 2:

Provide a breakdown of the costs incurred in FY85, FY 86, and FY 87 (projected) of the functions that can be relocated.

Answer:

Translated at a foreign currency rate of DM 1.99 to the Dollar, the rate of the FY 1987 Supplemental Request, operating costs for the Radio Liberty Division were $19,018,200 for FY 1985 and $17,292,300 for FY 1986. Projected costs for FY 1987 are $18,160,700.

Question 3:

Provide an estimate of the relocation expenses and the startup costs of the functions identified.

Answer:

RFE/RL management estimate that a relocation of RL to the U.S. would require approximately $40 million dollars.

Question 4:

Provide an estimate of the annual operating costs to keep these functions in place versus in the U.S. (use the same currency conversion rate that sustains the FY87 supplemental request.)

Answer:

Projected FY 1987 operating costs for the Radio Liberty Division in its current configuration are $18,160,700 at DM 1.99 to the Dollar. If the Radio Liberty Division was located entirely in the United States, the annual operating costs in FY 1987 would be approximately $16,300,000.

Question 5:

Identify the number of personnel that would be involved in such a move and indicate how many positions can be Americanized.

Answer:

Some 270 people would be involved in a relocation of RL. Positions that can be "Americanized" already are, i.e. senior management. Because of the unique nature of the mission native speakers of Russian, Tajik, Uzbek, Georgian, etc are required to fill positions as writers, editors, and broadcasters. In many instances people who occupy such positions are American citizens. In some cases they are not. Transferring such key people would require assistance from INS, among other agencies.

Question 6:

Identify the severance pay impact, if any.

Answer:

In the event of a relocation of the Radio Liberty Division to the United States, an undetermined number of employees would be terminated either at the wish of the employee or of Radio Management. According to union contracts, employees are entitled to notice and severance payments based on years of service. Additionally, a termination count in excess of fifty people requires us to petition the Bavarian Labor Ministry for approval to take the action. Tied to this approval would be a requirement to establish a "social plan" with the Works council to determine which employees would be terminated, to provide additional severance payments, to arrange for re-training of employees, and to meet other social needs of those affected. We would also be required to purchase pension annuities for the terminated employees. The payments in cases of employees with long years of service could amount to $274,400 per employee. This estimate includes: severance - $31,200; payment for unused vacation - $5,400; final return transportation and shipment of goods - $13,000; social plan - $53,600; unemployment insurance - $45,400; and purchase of pension annuity - $125,700. Foreign currency translation rates are at DM 1.99 to the Dollar.

BONUSES AND CASH AWARDS

This Subcommittee has fully provided the $33,195,000 supplemental for 1987 because we were told that the exchange rates were devastating the Radios. Last year we also appropriated a supplemental of $18,800,000.

However, I am concerned that all of the increased costs are not attributable to exchange rate losses. Yesterday we learned that in 1986, 7 RFE/RL officers received bonuses totalling $67,000. In 1987, 6 of these 7 have received bonuses amounting to $43,000, and Mr. Pell was awarded $13,900.

Question. Is it the annual practice of RFE/RL to award bonuses to its officers and what procedures govern the award?

Answer. To begin with, it must be pointed out that the entire $33,195,000 is solely for currency losses. It cannot be used for any other purpose. Losses will be certified to the Congress by the Director of the Office of Management and Budget. If the currency losses are less than anticipated, the surplus will be placed in reserve by OMB through the apportionment process until additional losses are certified.

As to bonuses, in 1983 RFE/RL retained The Hay Group to undertake a study of organizational compensation - to include salaries, benefits, and allowances. One of the main purposes was to identify and resolve the Radios' difficulties with recruitment and retention of the type and quality of personnel required to carry out the mission.

The Hay Group was selected from among a number of U. S. management consultancy firms, based on its recognition as a leader in the field and its previous experience in dealing with U.S. Government agencies, which has included presentation of its findings and recommendations to OMB and Congressional groups.

One of the major Hay recommendations was to make executive pay more comparable to private sector practices. In 1986 RFE/RL implemented performance pay for executives on an annual basis. Performance objectives were developed and agreed upon by the President and the officers; performance appraisals were then prepared and rated by the President.

Question. **Who determines the bonuses - the officers themselves?**

Answer. The President recommends the amount of awards for all officers, except himself, and submits the list to the RFE/RL Board of Directors for approval. The Board also determines the amount to be awarded to the President.

PERSONNEL SYSTEMS

1. The BIB is requesting $1,650,000 for purposes of consolidation.

Question. **What is the consolidation program? How long has it been in process?**

Answer. The current personnel system is inequitable and extremely difficult to administer. It remains a hybrid system resulting from the consolidation of Radio Free Europe and Radio Liberty more than ten years ago. In some instances employees doing the same work have different job titles, different job descriptions, different salary scales with different numbers of grades, steps, within-grades and longevity requirements. This has resulted in a number of claims in German labor court for upgradings. Consolidation of the several salary scales is necessary to remove these inequities.

Question. **Is the request for $1,650,000 for the purpose of raising salaries? If so, which employees are scheduled for raises? How many of these are considered top management versus mid-level management?**

Answer. The total cost for consolidation of personnel systems for Radio Free Europe and Radio Liberty is $1,745,000 of which $1,650,000 is in the salary line increase and $95,000 is on the tax line increase. This includes $1,208,000 to consolidate the salary scales throughout the organization so that employees performing the same jobs will receive equal pay; $137,000 to establish a system of merit pay for mid and upper-level managers; and $400,000 for programs to recognize superior performance of non-managerial level employees throughout the organization. The $1,745,000 is the minimum cost for implementing personnel management and employee incentive programs for RFE/RL. As the new personnel system is implemented, salaries that are currently lower than the new consolidated scale will be raised accordingly. This new consolidated scale is currently being negotiated with the Union in advance of implementation, as required.

Question. **Has the consolidation of personnel systems and related actions established a merit system of pay and bonus? If so, how have the merit increases and bonuses been distributed?**

Answer. The consolidation of personnel systems will establish an annual on-going program of merit pay for mid and upper-level managers and superior performance recognition programs for non-managerial level employees. Of the awards distributed in 1987, the following shows the percentages of total awards made to each level:

	1987
Performance Awards - Executives	25%
Performance Bonus - Managers	32%
Superior Performance Awards - Non Managers	43%
	100%

SALARY CAP

The Federal Government recently raised the salary cap for senior personnel.

Question. **Was the salary cap raised for RFE/RL personnel? Are you under any legal obligation to increase the cap?**

Answer. Executives of RFE/RL whose salaries are capped by the Corporation at the USG's Executive pay cap received raises subsequent to the USG pay increase. RFE/RL has no legal obligation to either retain or lift the cap on executive pay. However, it has been the consistent practice for RFE/RL to follow the Government's lead with regard to capping executive pay.

Question. **Why at a time when RFE/RL is faced with budgetary restraints would you raise the salary cap?**

Answer. For the same reasons that the Congress raised the salary cap for the Federal Government, despite problems with the budget deficit. The budgetary restraints facing RFE/RL relate to projected losses of $33.2 million on purchases of foreign currencies, mainly Deutsche Marks. The FY 1987 budget appropriation included provision for salary increases for all employees. Following the lead of the U.S. Government, RFF/RL met the Federal cap increase.

Question. **What was the cost to meet the salary increases resulting from the raise in the cap? How is the cost to be funded?**

Answer. The cost of implementing the increase in the cap in FY 1987 amounted to $25,582. This amount will be absorbed within current appropriations.

CLERICAL/SECRETARIAL STAFF

The Federal Government recently established a special pay rate for selected clerical and secretarial staff.

Question. **Did RFE/RL provide a similar increase for its Washington based staff?**

Answer. RFE/RL is in the process of implementing this raise retroactive to April 1, 1987.

Question. **If not, why?**

(See above answer)

SUPPLEMENTAL REQUEST

BIB has requested $33.2 million for a fiscal year 1987 supplemental for RFE/RL.

Question. **Is any of the supplemental request for pay increases or the consolidation of personnel systems?**

Answer. No. The $33.2 million FY 1987 supplemental request is solely for foreign currency losses. It may not be used for any other purpose.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Question 1:

What is the 1987 and 1988 budgeted lapse rate for RFE/RL, Inc.? What was the actual lapse rate in 1986, and the current lapse rate in 1987.

Answer:

There is no budgeted lapse rate for FY 1987. The FY 1988 budget request provides for full funding of the on-going FY 1987 personnel; ten new positions in Soviet Nationalities broadcasting are lapsed by 60 percent in FY 1988. RFE/RL's lapse rate has been historically low, due to little turn over in staff. The lapse rate in FY 1986 was 1.6 percent. The current lapse rate in FY 1987 is .5 percent.

Question 2:

The budget request assumes an increase of 28 positions from the 1986 to 1987 level. This is an interesting assumption, given the fact the BIB staff informed Committee staff last year that the 1987 appropriation was insufficient to maintain on-going operations. Provide a description of each new position.

Answer:

The FY 1986 budget provided for 1775 employees, the on-going level for FY 1987. However, at the close of FY 1986, twenty-eight of these positions were vacant, accounting for the lapse rate. These 28 vacancies resulted from retirements and terminations throughout the organization. Many of these positions were in the process of being filled at the end of FY 1986.

Question 3:

Please provide a brief description and funding level for each contract for professional services and consulting in 1986 and 1987.

Answer:

The listing follows.

RFE/RL,INC.

Professional Services
FY 1986 - FY 1987
($000 omitted)

		FY 1986 Actual DM 3.08	FY 1987 Projected DM 2.53
Pension and Insurance Consultants			
Dr. Bode - Overseas Actuary	Munich, Germany	37	
William M. Mercer, Inc. - U.S. Actuary	Washington, New York	79	
		116	126
Legal			
Lunde & Davis - Attorneys	New York	16	
Cohn & Marks - Attorneys	Washington	52	
Garrigues Walker - Attorney	Madrid, Spain	2	
J. Gassiot - Attorney	Barcelona, Spain	1	
Dr. Tito Arantes - Attorney	Lisbon, Portugal	5	
Dr. Nuno Fonseca - Attorney	Lisbon, Portugal	6	
Dr. Barreira de Carvalho - Attorney (Labor)	Lisbon, Portugal	6	
Painho - Attorney	Lisbon, Portugal	2	
Dr. Alfred von Hofacker - Attorney	Munich, Germany	41	
Various attorney fees; Court costs	Munich, Germany	17	
Porter & Dunham - Attorneys	Paris, France	2	
Branger + Heritier - Attorneys	Paris, France	1	
Warren & Murton - Attorneys	London, England	5	
		156	163

		FY 1986 Actual DM 3.08	FY 1987 Projected DM 2.53
Protective Services			
Security Force at PALS	Spain	142	
Security Force at Lisbon, Gloria and Maxoqueira	Portugal	211	
Watchmen	Islamabad	3	
DSW - Guard Service	Holzkirchen, Germany	21	
DSW - Guard Service	Schleissheim, Germany	83	
DSW - Guard Service	Munich, Germany	883	
Wach. & Schliess Ges. - Guard Service	Lampertheim, Germany	121	
Wach. & Schliess Ges. - Guard Service	Biblis, Germany	118	
		1,582	2,037
Research & Evaluation			
Contractual Services with Public Opinion and Poling Institutes (Gallup, Intora, Sondage, Sauerberg, etc)	Finland; France; Israel Vienna; Sweden	961	1,242
Engineering			
Tektronix Services	New York	2	
BIB Monitor Services	Washington	63	
Miscellaneous Free Lance Services	Munich	7	
		72	74

Administrative		FY 1986 Actual DM 3.08	FY 1987 Projected DM 2.53
Chadwyck-Healey-Microfilming Services	Washington	12	
Walter Roberts - Consultant	Washington	30	
Burson-Marsteller - Public Relations	Washington	55	
Arthur Andersen & Co., Auditors	Washington	6	
John Adams Associates - Consultants	Washington	32	
Cosmo Consultant Serv. - Computer Software	Washington	19	
Steven Klaidman - Consultant	Washington	32	
Exspeedite Printing Services	Washington	52	
Doctors and Nurses Contract Work at Lisbon, Gloria, Maxoqueira	Portugal	28	
Miscellaneous Services - Alves, Vilhena, Franca, Avelar, Basto, Rosa, Bivar	Lisbon, Portugal	21	
Arthur Andersen + Co., Mota - VAT Consult.	Lisbon, Portugal	4	
Figueiredo - Teletype Technician at Lisbon, Gloria, Maxoqueira	Portugal	3	
IFOGEC - Computer Service	Paris, France	6	
Roselyn Romberg - Computer Consultant	Paris, France	5	
Fa. Vohburger Serv. - Delivers daily News Budget	Munich, Germany	14	
Secretarial, Translating, and Typing Services	Munich, Germany Eur. Field Bureaus	70	
Armored Car Service	Munich, Germany	1	
Special Information Sources	Munich, Germany	20	
Arthur Andersen - Admin. Computer Consult.	Munich, Germany	7	
Fa. Henke - Computer Software Serv.	Munich, Germany	177	
Software AG - COSMIC Software	Munich, Germany	70	
Peter Vogel - Computer Software Services	Munich, Germany	79	
P. Moll - Computer Software Serv.	Munich, Germany	7	
Digital Equipment -Computer Software Serv.	Munich, Germany	148	
COSMIC Project - Software Serv.	Munich, Germany	266	
Printing Services	Munich, Germany	5	
Misc. Computer Software Services	Munich, Germany	11	
TUEV Service	Munich, Germany	14	
Edward van der Rhoer - Programming & Personnel Consultant	Munich, Germany	17	

		FY 1986 Actual DM 3.08	FY 1987 Projected DM 2.53
Dr. John Klensin – Computer Consultant	Paris, France	4	
ECONO MARK - Data Processing Services	Munich, Germany	17	
News Stringers	Europe	55	
HQ Lease Extension	Munich, Germany	22	
Hay Associates - Consultants	Washington, D.C.	213	
DSW - Transportation Services	Munich, Germany	85	
Architectural Serv. (Kueseling, Gehringer, etc)	Munich, Germany	5	
T O T A L		1,612	1,452
		4,499	5,094

Question 4:

Technical costs were $8,672,000 in 1986 and are projected to rise to $13,309,000 in 1988. What are the components of "technical costs" and why have they risen?

Answer:

Technical costs include the following: program transmission lines - $1,760,000; technical repairs and maintenance - $2,298,000; monitoring and miscellaneous technical costs - $98,000; and power for transmitters - $9,153,000. The budget of $13,309,000 includes $858,000 in increased costs for power, tubes, and parts due to installation of new transmitters in West Germany and Iberia. The remainder of the technical budget provides only for inflationary increases for the costs for goods, services and power over the FY 1986 and FY 1987 budgets. The actual expenses of $8,672,000 for technical costs are shown at the FY 1986 budget rates of DM 3.08; Peseta 171.80 and Escudo 160.16 to the Dollar. The FY 1987 and FY 1988 budgets for technical costs are at the FY 1987 budget rates of DM 2.53; Peseta 155.20 and Escudo 159.10.

Upon his retirement on December 31, 1985, Walter Roberts became Senior Advisor to the Chairman of RFE/RL, Inc. His compensation is fixed at $36,000 per annum with a minimum payment of $90,000.

Question. Please provide for the record a copy of the agreement between Walter Roberts and Malcolm S. Forbes, Jr., regarding Mr. Roberts' appointment as Senior Advisor.

Answer. The letter defining the terms of the agreement is attached.

Question. Did Mr. Roberts condition his retirement upon an agreement by RFE/RL, Inc., to retain him as a consultant?

Answer. No, he did not.

Question. Do you believe it is appropriate to offer a Federal employee a "golden parachute" with a $90,000 minimum payment, especially at a time when Federal expenditures are so limited?

Answer. Of course it is not appropriate, nor did Mr. Roberts receive such a thing. The term "golden parachute" implies payments made as a reward for past service and/or an incentive to leave, unrelated to any obligation to perform services. The contract offered to Mr. Roberts obligated him to perform specific services for the Chairman of RFE/RL, Inc. The amount of compensation was appropriate to the amount of work required. Moreover, given that Mr. Roberts' retirement took place in the middle of sensitive negotiations with the government of Israel, the Chairman saw a need for continuity and follow-up in those talks, thus necessitating the contract with Mr. Roberts.

Question. Are you aware that although the contract with Mr. Roberts calls for him to coordinate the modernization program with Congressional committees, he has never been in contact with the staff or members of the Subcommittee?

Answer. Mr. Roberts' contract was deliberately written to include a wide variety of possible services. This provided the Chairman flexibility in using Mr. Roberts' services where they were most needed. In actual fact, Mr. Roberts has been asked to devote most of his time under the contract to representing RFE/RL in negotiations with the Government of Israel. Those negotiations have taken much longer than originally anticipated. Mr. Roberts has also advised the Chairman and the BIB staff on inter-agency relations with USIA and on legislative strategy generally. He has not yet been asked to make any contacts with Congressional committee staffs, though he has maintained some personal contacts with authorizing committees that have been helpful to us.

Question. Please provide a detailed list of the specific duties currently assigned to Mr. Roberts.

Answer. Mr. Roberts has been asked to devote his full time under the contract to completing the negotiations with Israel.

Question. Please provide a list of all meetings attended by Mr. Roberts since his appointment as Senior Advisor.

Answer. Mr. Roberts has traveled to Israel four times to represent RFE/RL in negotiations with the government of Israel:

May 24, 1986 - June 7, 1986

October 21, 1986 - October 25, 1986

January 23, 1987 - February 2, 1987

May 11 - May 20, 1987.

He has also represented RFE/RL in two sets of formal talks held with the Israelis in Washington:

September 3 - 10, 1986

March 30, 1987 - April 10, 1987.

These negotiation rounds generally involved numerous sets of plenary sessions, as well as working group sessions. They also involved informal planning sessions of the U.S. negotiating team. The number of such individual meetings during the above six negotiating sessions probably totaled over 100. Working days in Israel were typically twelve hours or more.

In addition to participating in these formal negotiations, Walter Roberts attended interagency planning and coordinating meetings on the following dates:

January 30, 1986

February 24, 1986

February 25, 1986

March 14, 1986

March 15, 1986

March 24, 1986

May 15, 1986

June 24, 1986

July 1, 1986

July 9, 1986

August 18, 1986

October 29, 1986

October 20, 1986

November 4, 1986

January 8, 1987

February 4, 1987

February 11, 1987

February 20, 1987

February 27, 1987

March 12, 1987

March 23, 1987

April 21, 1987

April 27, 1987

May 29, 1987

In addition to these formal meetings, Mr. Roberts has undertaken numerous contacts with Israeli officials in Washington, Jerusalem, and Tel Aviv, both by telephone and in person. His contacts, expertise, and advice have been most helpful to the Chairman of RFE/RL in moving forward this highly important project.

RFE-RL INC

November 25, 1985

Mr. Walter R. Roberts
Executive Director
Board for International
  Broadcasting
1201 Connecticut Avenue, N.W.
Washington, D.C. 20037

Dear Walter

This letter sets forth the terms of your agreement with RFE/RL, Inc., to serve as a Senior Advisor to the Chairman of RFE/RL upon your retirement from the staff of the Board for International Broadcasting (BIB), which will occur on December 31, 1985.

1. You will be retained as a Senior Advisor to the Chairman of RFE/RL. Your principal responsibilities will be to assist RFE/RL's program to improve and enhance its facilities This will include coordinating the modernization program with the Department of State, United States Information Agency, National Security Council, Office of Management and Budget, and Congressional committees and exercising duties as principal negotiator with foreign governments. All of your activities will be subject to the supervision and direction of the Chairman and the Board.

2. You will be paid for your services in equal bi-monthly installments at a rate of $36,000 per annum. Your position will be that of an independent contractor, and you will be solely responsible for any and all taxes that may apply to the compensation paid to you. You will also be entitled to be reimbursed for expenses you may incur (e.g., travel, per diem, publications, telephone, taxis, parking representation) to the extent permitted by the procedures and policies of RFE/RL. You will be provided with support services necessary to carry out your responsibilities. You will not be entitled to any other benefits or to any cost-of-living or other increases during the period that you serve as a Senior Advisor to the Chairman of RFE/RL.

3. Unless sooner terminated as hereinafter set forth, this agreement will, unless renewed, automatically and without further notice terminate thirty (30) months after you become Senior Advisor to the Chairman of RFE/RL. RFE/RL may at any time and without cause (by action of its Board of Directors as it, in its sole discretion, shall determine) terminate this agreement upon thirty (30) days written notice to you; in that

event you shall be entitled to continue to receive payments during the remaining term of this agreement in an amount equal to the difference between $90,000 and the compensation you have received between your becoming Senior Advisor and the date of termination. RFE/RL may also terminate this agreement upon ten (10) days notice at any time that you are unable by reason of physical or other disability continuing for more than thirty (30) days to perform the duties specified herein. In that event you shall be entitled to no further compensation or benefits effective as of the date of termination. You may terminate this agreement at any time; in that event, you shall receive no further compensation or benefits.

Your past service to the BIB has been invaluable and deeply appreciated. I believe that the arrangements set forth above will permit RFE/RL to receive the benefit of your experience, assistance and guidance and at the same time provide for an orderly transition in a way which is mutually beneficial. We look forward to working with you under the arrangements set forth in this letter in the future. If this letter correctly sets forth our understanding, I would appreciate it if you would sign and return one copy to me.

Very truly yours

Malcolm S. Forbes, Jr.
Chairman of RFE/RL, Inc.

Accepted and Agreed to:

Walter R. Roberts

QUESTIONS SUBMITTED BY SENATOR DOMENICI

BIENNIAL BUDGET CYCLE

Calls for budget reform are increasingly heard as budget deadlines are too often missed, important budget decisions are delayed, appropriation bills and other direct spending legislation are held up in committee, and omnibus spending bills take the place of timely and orderly consideration of individual bills. One procedural reform that is being considered is the two-year budget cycle where budget and appropriations matters would be considered in the first year, and authorizations and oversight would be undertaken in the second year.

Question 1:

Would your agency/department favor a biennial budget process? What benefits would your agency achieve in a two-year appropriations cycle?

Answer:

BIB would endorse a biennial budget process because it would result in more efficient and professional resource management, more effective planning, and a reduction of several hundred person hours now devoted to preparing annual budget presentations and addressing requests for information from OMB and the Congress. A biennial cycle would also significantly reduce the number of transatlantic trips now required of the RFE/RL President for purposes of testifying before OMB and Congressional Committees. The current program to modernize facilities would benefit enormously from a two year cycle. Purchasing of equipment that often requires long lead times, installation and maintenance contracts, and complex engineering planning could all be conducted in a more efficient and cost effective manner.

Question 2:

Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission.

Answer:

In recent submissions virtually 100 percent of the RFE/RL operating budget could be considered repetitious, in that requests have been based on current levels plus an inflationary factor. (Very little in the way of enhancements have been sought in the light of the need for fiscal restraint.) There are two exceptions. The first involves currency adjustments. Eighty percent of the operating budget is spent on foreign currency (71 percent on Deutsche marks.) Volatile exchange rates and a declining dollar have forced the BIB to seek supplemental appropriations just to maintain the integrity of the original dollar appropriation. These periodic and time-consuming supplemental requests could be eliminated if a foreign currency stabilization fund were established and properly funded. The second exception involves capital funding for technical modernization. However, these requests will no longer be necessary once monies for the program are fully appropriated and the modernization effort completed.

Question 3:

What difficulties can you foresee in preparing and submitting a two-year budget to the Congress.

Answer:

With the exception of currency fluctuations noted in the above answer - none.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STATEMENT OF CLARENCE THOMAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ACCOMPANIED BY:

ANDREW S. FISHEL, DIRECTOR, FINANCIAL AND RESOURCE MANAGEMENT

CHARLES A. SHANOR, GENERAL COUNSEL

BUDGET REQUEST

Senator HOLLINGS. Our next witness is Mr. Clarence Thomas, the Chairman of the Equal Employment Opportunity Commission [EEOC]. Mr. Thomas is accompanied by Mr. Andrew S. Fishel, the Commission's Financial and Resource Management Director.

The EEOC is recommending $193,457,000 for fiscal year 1988, and $24 million over the fiscal year 1987 budget request. The request also includes funds to increase their workforce by 142 people.

PREPARED STATEMENT

Mr. Thomas, I don't want to interrupt your presentation of your statement, or however you wish to highlight it, because we will include it in its entirety in the record, but, with regard to the increase of 142 in the work force, do you have any lapses or any vacancies at the EEOC right now?

Mr. THOMAS. That is all right, Mr. Chairman. I can forego any prepared remarks. We have submitted them for the record.

Senator HOLLINGS. Your statement will be included in the record.

[The prepared statement of Mr. Thomas follows:]

PREPARED STATEMENT OF CLARENCE THOMAS

CHAIRMAN

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the Equal Employment Opportunity Commission's budget for fiscal year 1988, and convey the importance of this budget in our continuing efforts to make EEOC an effective enforcement agency.

The Equal Employment Opportunity Commission was given authority to enforce Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, religion, sex and national origin. The Commission's enforcement power was expanded to include the Age Discrimination in Employment Act and the Equal Pay Act. EEOC accomplishes its enforcement responsibility through informal methods of conciliation or by filing suit in Federal District Court if conciliation fails.

EEOC's budget request for fiscal year 1988 is $193.4 million.

When I became chairman of the Commission in 1982, I identified major problems hampering the Commission's ability to enforce the law.

I've discussed these management problems in previous congressional testimony and won't go into those details today, except to say that EEOC, in the last five years, has made great strides in improving its internal operations. By streamlining and increasing the productivity of the agency's organizational structure, we've enhanced our ability to help victims of job discrimination.

Let me give you an idea of some of the steps that have taken place to create a new, tough, effective EEOC. In the personnel area, we have worked to recruit more qualified employees. We have revised our performance evaluation system to increase accountability and we have expanded the agency's training programs to reflect EEOC's commitment to quality in processing discrimination charges.

We completely revised the financial accounting system to meet General Accounting Office standards for the first time in the agency's 22-year history. We have developed and implemented a computer system to improve the collection and tracking of charge processing information.

In the last two years, several new policies adopted by EEOC have strengthened the agency's investigative process and enforcement efforts.

Our Enforcement Policy stresses the predictability of enforcement by EEOC. In every case in which cause is found to believe discrimination has occurred, the Commission will review the case for litigation consideration if conciliation fails.

The Remedies and Relief policy underscores EEOC's commitment to seek the fullest relief possible in every case of discrimination, whether it is sought in court, in conciliation agreements reached before litigation or in federal sector decisions. Remedies should give charging parties the jobs they would have held but for the discrimination, compensate victims for any loss of earnings, stop the discriminatory practice immediately and ensure that similar violations do not occur again.

The Investigative Compliance Policy ensures the Commission can secure the necessary information for making fair and informed determinations on charges. It streamlines and focuses our subpoena requests and stresses the availability of enforcement techniques other than time consuming subpoena enforcement proceedings, when respondents fail to cooperate with EEOC investigations.

The Policy on No Cause Findings establishes a review process within the agency for charging parties who request an appeal of a no cause determination. This policy improves internal control over the quality of investigations and enhances confidence in EEOC's charge findings.

Recently the Commission issued a new directive to field offices instructing the staff to submit directly to the Commission charges brought against state and local governments in which cause is found and conciliation fails. The Commission now forwards its litigation recommendations directly to the Attorney General of the United States. This is to ensure that charges filed against public sector employers be handled in the same thorough manner as those filed against private sector employers, and that cases transmitted to the Department of Justice for further action are fully developed and accompanied by appropriate recommendations.

Through these policy changes, which essentially make every charge a potential vehicle for litigation, the agency has become consistently more active in fighting discrimination through the courts. In fiscal year 1986, EEOC filed a record 526 court actions on behalf of job discrimination victims. During that year, the Commission also resolved more discrimination cases through litigation than ever before -- 310 through direct suits and interventions and 76 through subpoena enforcement actions.

My fellow Commissioners and I strive to establish EEOC as, first and foremost, a law enforcement agency. This Commission is committed to thorough investigations, aggressive enforcement of the law and securing full relief for victims of job discrimination.

To enhance our enforcement capabilities, we have initiatives underway to further improve our management systems and charge processing procedures. EEOC employees have responded to these changes with steady improvements in productivity levels. At the same time, the percentage of charges resolved on their merits has been increasing steadily from 38 percent in 1982 to 63 percent in 1986.

While this Commission has been successful in increasing productivity, we still have found it extremely difficult to keep pace with the rising number of charges in the pending inventory. From fiscal 1985 to fiscal 1986, the inventory of private sector charges to be processed by EEOC field offices increased by 10 percent. The number of charges pending increased by 22 percent at state and local agencies contracting with the Commission to process discrimination charges.

In addition, there is currently a 9.2 month inventory of charges in the Federal Sector Hearings Program and a 14.3 month inventory in Federal Sector Appeals.

EEOC's effectiveness may be threatened if these inventories cannot be processed in a timely fashion.

Our challenge in fiscal 1988 will be to reduce these case inventories while continuing to improve the quality of our charge processing. Realistically, to accomplish this goal, additional enforcement personnel are required.

The recommended EEOC budget for fiscal 1988 will allow the agency to support 142 additional FTE's. All of these positions will be assigned to our program offices, resulting in a higher rate of case closures and a declining inventory of charges. Ideally, by the end of fiscal 1988, charging parties will receive a determination on their complaint in an average 179 days, as opposed to the average 245 days it takes today to process a charge.

The Commission also seeks to increase grants to state and local fair employment practice agencies. These agencies are handling charges in record numbers. Therefore, $24,200,000 is requested to provide sufficient funding to aid these agencies to keep pace with their workload.

The Commission's request also includes an increase of $1,000,000 to enhance agency computer systems. The national Charge Data System, which we began to install in fiscal 1987, tracks each case through closure and replaces manual recordkeeping of thousands of charges. The field can access summary national data previously unavailable to them. We plan to install terminals in our Intake Units, so intake personnel will no longer have to fill out questionnaires manually, turn them over to a typist and require a charging party to wait for the typed form to sign. By enhancing the networking system, the intake officer will complete the form on the computer terminal and immediately print it out for signature. The new system automatically enters the charge into the national Charge Data System, freeing up intake personnel to better serve the public.

Finally, the budget request includes a one time increase for office equipment, prompted by the anticipated relocation of EEOC headquarters during fiscal 1988. To comply with new GAO space requirements, the new location will contain fewer square feet of space per employee, prompting a need for modular furniture to accommodate existing staff.

I reiterate, though, that the primary benefit of this budget request will be the reduction in charge inventories. By the end of fiscal 1988, we will be able to reduce the pending inventory in all areas to approximately six months.

I believe we have been successful at EEOC in establishing a strong law enforcement function for the agency. We intend to enhance that growing reputation. The resources we are requesting will ensure that the laws prohibiting employment discrimination will be vigorously enforced. Diligent and consistent enforcement of the law will guarantee that victims of discrimination will receive just relief and offending employers will be deterred from maintaining unlawful employment practices.

By strengthening its enforcement program, EEOC intends to preserve the rights of all people to work in an environment free of unlawful discrimination.

INTRODUCTION OF ASSOCIATES

Mr. THOMAS. Let me first introduce our new general counsel, who has just been confirmed, Charlie Shanor. He joins us from Emory University.

Senator HOLLINGS. Emory, do they have lawyers down there?

Mr. Shanor. Yes, sir.

Senator HOLLINGS. Of course, we have Sam Nunn who is a lawyer from there.

Mr. Shanor. A very fine one.

Senator HOLLINGS. Yes; a very fine one.

ADDITIONAL FTE FOR EEOC

I have been asking about the vacancies for years. We couldn't keep the positions filled down there because the private sector kept grabbing them away from you. You are asking for 142, and if you have a full complement, this will be the first time.

Mr. THOMAS. I have said consistently, and this is the first time I have appeared before you as chairman of this subcommittee, but I have said consistently during my tenure at EEOC that we would not come back for additional money or additional FTE until it was absolutely clear that we could not get along without them, and that it was necessary to keep this agency in a productive mode. We are there now. It is not a matter of turnover.

It is easy to play games with numbers. We have had ceilings that have been far in excess of our onboard. You can talk about onboard, or you can talk about FTE. We like to talk about FTE, so we can have a consistent working number each year.

The FTE for EEOC has been generally around the 3,100 to 3,200 range. In fact, it was 3,017 in fiscal year 1986. During the last year, we dropped down at times below the 3,000 FTE range.

The reason for that had to do with a promise that I made when I went to EEOC, for a number of reasons, that I would not take budget cuts out of the hide of people who were in the agency at that time. I would not conduct RIF's, which I think really destroy your organization. What we have done is absorb any reductions, or the major parts of reductions, through attrition, and just lived with the staff going down without replacing it.

WORKLOAD

One of the problems with that is the workload. The work consistently comes in, we begin to lose ground, and we begin to build inventory. This is the mode that we are in now. The inventory is going up, and the staff levels are going down.

We need the 142 to get back to where the inventory goes down, where it gets back down to about a 6-month level.

Senator HOLLINGS. We have heard from various sources that there could be a deficiency in the training of the EEOC intake personnel, and members of your investigative staff. What about the training, how do you recruit, hire, and train 142 new ones?

Mr. THOMAS. It is more than 142 new ones. Without getting into a long explanation, I think that it has to be understood from a budgetary standpoint, for us in the agency the first things to go are discretionary things like training.

When you get a budget cut, and you don't want to RIF, and you don't have savings from a RIF in the current fiscal year, you simply cut out things like training, so there is a deficit there. The people in our agency generally have been trained to do what we call the rapid charge system, which is a very quick charge processing system that was used to get rid of our backlog in previous years.

I think that there is a major deficiency in that approach and that we should go to more investigations. In fact, this year the first major training of our investigators will take place in over half a decade. I have been there for most of that time.

TRAINING

We have upgraded training during my tenure. We have done more training than has ever been done on a consistent basis, but still not enough. So in June, we will train our entire investigative staff through three series of 1-week training courses in Dallas. That is a very expensive proposition, but it is absolutely necessary if we are going to have our staff in a position from which they can, then, process and investigate cases properly.

APPEALS PROCESS

Senator HOLLINGS. What about the appeals process. I understand that you are asking for a new division, Office of Program Operations, to handle appeals from the field offices. Why do we think that this is necessary?

Mr. THOMAS. Mr. Chairman, that problem is one, really, of quality.

We found, early in my tenure, that you can really get the numbers. You can come up here with numbers every year. The problem for us is: are the people who come to this agency being properly served. When there is a finding of discrimination, the commissioners review the findings that go to litigation. We know what the quality of those are.

On the other hand, when there is a no cause decision made that there is no discrimination, and that is the bulk of the cases determined on the merits, we don't know what the quality of those cases is. The charging parties don't generally have an appeal right.

In order to catch that problem, in order to address it, we set up an appeals unit so that the charging parties, who feel that they have not been properly served, can come back to the Commission and say: Give me a second bite of the apple.

MANAGEMENT PROGRAM

Senator HOLLINGS. Is that your quality assurance program that you are talking about?

Mr. THOMAS. No; the quality assurance program is a different program. This is something that my Management Director, John Seal, and

I worked on 4 years ago. We are, to my knowledge, the only ones in the Federal Government who have this program. This is a program that is used by the Japanese.

It is more of a management technique. We are creating sort of a culture of excellence where you give the managers an opportunity to sit down—quality circle is a part of it, and that is a pretty common term. They sit down and determine what the quality characteristics of a product are. The effort then is to go out and produce those quality characteristics without all of the review and the checking, et cetera.

The quality of your work goes up, as well as the quantity of your work because you are not spending time checking and doublechecking. That program we started 4 years ago. We will have all of our offices onboard in this fiscal year.

Senator HOLLINGS. How is it working?

Mr. THOMAS. Great. It is no pie-in-the-sky. It is no panacea. It is an investment in the future of the agency. Hopefully, one of my successors can take credit for it. It is something that actually works, and it is more than putting up posters, a lot of pep talks and rallies. It takes a long time to implement.

MEASURE OF EEOC SUCCESS OR FAILURE

Senator HOLLINGS. How do I measure the failure or success of EEOC? How would you do it if you were in my position?

Mr. THOMAS. If I were in your position, I think I wouldn't listen just to the quantity statement. It is real easy for us to get numbers. If all you were looking at were the quantity of cases, we could produce all of those numbers for you. It is the easiest thing in the world.

Senator HOLLINGS. What would the numbers show?

Mr. THOMAS. The numbers can show that we have the highest number that we have ever had. In fact, when I went back to quality investigations, the initial triggering factor was that we had closed more cases than anybody in the history of the EEOC, and that bothered me because it wasn't that the quality of those cases was good.

What we have done is go back, looked at some of the cases and did some checking. GAO has looked into one of our offices. We did our own work before that, and we were not satisfied with the quality.

I think that it will take a little bit more indepth analysis, and I think a part of that has to do with the responsibilities of the oversight committees, to take an actual look at the kinds of cases that we are doing, and how we resolve them. I think that I would ask me or my successor how many investigations we are doing, how many full investigations.

Senator HOLLINGS. How many do you have?

Mr. THOMAS. We don't know. The emphasis has not been on that. We look at case closure and things like that, but we don't go with full investigations. We don't record that yet. I think in the future, with the charge data system, our new information system, we will be able to track those kinds of things.

I would also look at conciliation trials. How many cases do we use as our litigation vehicles, and are those numbers going up? For us, they, indeed, are going up. I would look at the monetary relief, as well as the kinds of injunctive relief that we get in cases, the number of conciliation agreements, the number of settlements. I would look at all those things, recognizing that the quantity is not enough, but going into the substance of some of those settlements.

STATE AND LOCAL PROGRAMS

Senator HOLLINGS. Your State and local programs have cost between $18.5 and $20 million a year, but for fiscal year 1988, you are asking for $24.2 million. This is $4.5 million higher than any previous fiscal year.

What are the benefits to be gained? What are you going to do now all of a sudden, since you have been doing so well?

Mr. THOMAS. It is not all so good.

Senator HOLLINGS. Are they going in the other direction now?

Mr. THOMAS. There is good and there is bad, you know that as well as I do.

The State and local programs, when we have cuts, or when we have straight line budgets, we all decide that we are going to live with a bigger inventory, and the State and local agencies have to do the exact same thing.

Their inventories, if we do receive just current year funding, will go up to about 17 months, then your constituents would complain that it is taking too long. The effort is to get it down to 13 months, or 13½ months.

The effort for us is to get it back to what we believe our statutory limits are, 180 days, or 6 months. If we have cases that go beyond that, then, again, your constituents complain that we are taking too long.

Actually, you begin to lose your witnesses. The companies might go out of business. They may move. The personnel change. People's memories fade. So you can't investigate the case.

So the effort here is to avoid, first of all, their inventory from going up to almost 1½ years, and to bring it back down closer to 1 year. We can't totally do that because we don't fund their entire caseload, and our costs are not their total costs. Our funding doesn't represent their total costs.

Senator HOLLINGS. How long have you been at EEOC?

Mr. THOMAS. Five years.

USE OF 800 NUMBER

Senator HOLLINGS. What about that 800 number, is that working?

Mr. THOMAS. It does. It works very well. It is not very expensive for us, and we do receive calls.

I am from Savannah, GA, I am a little south of you. When I became chairman 5 years ago, I went back home to Savannah. Most of the people didn't know what EEOC was, although they were quick to praise me for being there. My effort has been since then——

Senator HOLLINGS. Like me, they were glad to get rid of you.

Mr. THOMAS. That is right, they were pretty happy about that. I didn't mind their not knowing where I was. They hadn't known in prior years and didn't care. What I was concerned about was the fact that if they didn't know what EEOC was, they certainly couldn't take advantage of it.

VOLUNTARY ASSISTANCE PROGRAM

So we started a couple of programs, the Voluntary Assistance Program, to get out and talk to small employers, small unions, to explain their responsibilities to them; and the Expanded Presence Program, to get to groups that would represent potential charging parties, to tell them what their rights were. We have received a very large number of charges through that.

One other aspect of that was to be accessible to the public, and one way to do that is to have an 800 number, 800-USA-EEOC, which is easy to remember, so that they can get to the agency and ask questions. It does work.

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Senator HOLLINGS. The EEOC has had a study underway for some time about the uniform guidelines on employee selection procedures. Why does the Commission believe such a study was necessary? Tell me about its cost, and when will it be completed?

Mr. THOMAS. The study is not expensive, and it is something that I have pushed during my tenure.

I have gotten into some trouble for it from time to time, but I believe that any guidelines or any procedures that are based on the assumption that any race is not as good as another race is racist. I have said that and I stand by that.

I do not, however, push changes in any guidelines unless we have a clear direction or a clear focus, and an approach that has a basis in law, as well as in psychology, testing psychology, or whatever else you want to use.

The problem that I have had is simply that to bring the individuals on who could actually do the study is a very extensive proposition. I just don't want my opinion to be codified in guidelines or regulations. It is something that has taken a long time. I am still not quite satisfied with the focus of it. It is a very extensive thing, it is about 600 pages, and it was done by one person part-time.

Senator HOLLINGS. When is it going to be completed?

Mr. THOMAS. I think this year some time. I have said that for a couple of years. Of all the things that I have to do there, it is not the No. 1 thing.

APPEALS PROCESS

Senator HOLLINGS. You submitted a reorganization plan for our approval that establishes an appeals process at the headquarters level. Let me ask you about that.

Will the automated system that you are installing allow your organization access to case data directly from the local area offices?

Mr. THOMAS. The short answer to that, Mr. Chairman, is not immediately, but down the road, as we expand our computer system, we will interface our central data system with the appeals system.

I underscore that by noting that we are rebuilding, and we have rebuilt an entire central data system with no additional funding. We are in the last stages of that. So the interface won't take place for a while.

Senator HOLLINGS. An employee advocacy group got in touch with us that the public information requested from the Commission is untimely, and often incomplete. Are you familiar with that?

Mr. THOMAS. That is because some of these groups want the information generated in the way that they want it generated.

Senator HOLLINGS. How.

Mr. THOMAS. They want it generated in a certain category. We can't generate information to please everybody. A great deal of our information is generated to do our annual report, to respond to inquiries you might have.

The one group that comes after us, that has hounded us, is the Women Employed, because they like the data in the form that they want it in. They like our management data, but some data we can't give them. If they have any idea as to how to build a central data system, to give them all the information and to pay for it, then I think they can have it.

If we don't have complete information, we can't give it to them, and we can't have complete information until we have a central data system.

BREAKDOWN OF EMPLOYEES BY SEX

Senator HOLLINGS. What is the breakdown at EEOC with respect to male and female employees?

Mr. THOMAS. It is about half and half.

In fact, the most important part is that our female employees at EEOC—let me restate that. My chief of staff, as well as the head of the appellate unit, as well as our acting deputy legal counsel, et cetera, the top level people, a great number of them are females. They are not stacked down in the bottom tier. We will put our numbers against anybody in government in that regard.

FIELD OFFICE DIRECTORS

Senator HOLLINGS. One little question about your directors in Seattle, WA, office, and your office in Birmingham, AL. Are you familiar with those news articles?

Mr. THOMAS. I have seen them, but I have not read them in depth.

Senator HOLLINGS. You are not planning on switching those directors?

Mr. THOMAS. I am.

Senator HOLLINGS. You are?

Mr. THOMAS. I certainly am.

Senator HOLLINGS. Do you think you are going to solve that problem?

Mr. THOMAS. I don't know if I am going to totally solve it. One of the problems, Mr. Chairman, is very simple. The Civil Service Reform Act is an interesting creature. It prevents you from hiring people, and it prevents you from firing people, but you can do anything else you want to do between that.

Sometimes, you just don't have a perfect fit of people, a perfect match, as well as performance problems. What we attempt to do when we are not in the position to totally eliminate people from the work force—if we have a weak manager who is already there that we can't do anything about, a manager who has a style that you can't do anything about but does not reach a level of cause to remove—then you put that person in a position where his or her weaknesses are shored up and strength can be taken advantage of.

At EEOC, I have made it a policy not to tolerate people who don't work well with the agency. We have removed a great number of people, and we have attempted to shore up our appraisal system, but that takes time.

I might add this personnel, both the positive side and the negative side—the positive side being the recruitment, training, et cetera, and the negative side being removal and discipline—has been and is one of the major reasons for me staying at EEOC, because it takes a long time to get used to that process. In addition to that, I am judgment proof, so I can take whatever actions are necessary.

Senator HOLLINGS. You are judgment proof after 5 years in Washington?

Mr. THOMAS. I am slowly improving my net worth to zero.

Senator HOLLINGS. What work were you in in Savannah?

Mr. THOMAS. I never worked in Savannah. I was born and raised in Savannah. I grew up in Savannah. I worked for Union Camp one summer, but then it was Union Bag.

Senator HOLLINGS. Have you heard of Herb Septor?

Mr. THOMAS. I have heard that name, yes. I didn't work that high up, though. I was a proofreader. I proofread paperbags that had M&M on them, or Safeway, and things like that. It was a real tough job.

Senator HOLLINGS. Is there anything else that you want to ask of the committee this morning, or tell us about?

INCREASE IN EEOC BUDGET

Mr. THOMAS. Well, Mr. Chairman, there is one point that I would like to underscore.

I have been in this job for 5 years. This is, I think, my sixth budget cycle, starting with 1982. We have not come before this committee before with a major budget increase. This is the largest budget increase ever requested for EEOC.

If EEOC is to be a viable enforcement agency, with all the rhetoric aside that you hear out in the public, it has got to have this budget increase. This agency, to operate at any kind of an effective level, has got to have this budget increase.

Senator HOLLINGS. What is the overall increase, Mr. Thomas?

Mr. THOMAS. It is $24 million, or $23.9 million.

Senator HOLLINGS. Yes, $23.9 million, or $24 million, and you got that by OMB crowd.

Mr. THOMAS. I know this sounds somewhat different from the general perception, I have never had any real problems getting our budget through OMB. I have just made it very clear over the years that our track record has been that we only ask for what we need. I went to the President last summer and said that this year we need a major infusion of funds, and the result has been this $24 million request from OMB.

Senator HOLLINGS. Very good.

We appreciate your appearance, and your colleagues' appearance here this morning.

LETTER FROM AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND RESPONSE BY U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senator HOLLINGS. The subcommittee has received a letter from the American Federation of Government Employees. We will ask the Commission to respond to it and the letter and response will be printed in the record at this point.

[The letters follow:]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

June 23, 1987

Mr. Edward A. Watkins, President
National Council of EEOC Local #216
New York District Office
90 Church Street, Room 1504-D
New York, New York 10007

Dear Mr. Watkins:

This is in regard to your letter of May 11, 1987 to Senator Ernest F. Hollings, Chairman, Subcommittee on Commerce, Justice, State, and the Judiciary. The Senator has passed your letter on to the Equal Employment Opportunity Commission (EEOC) for direct response to the American Federation of Government Employees (AFGE). He has stated that he will publish this response in the Senate Hearing Record of May 12, 1987.

The FY 1988 budget as requested is the largest budget ever put forth by EEOC. The amount of $193,457,000 is an increase of $29,000,000 over our FY 1987 budget request. Also included in this amount is a state and local budget request of $24,200,000, which is an increase of $4,200,000 over that of FY 1987.

Since Clarence Thomas became chairman, a great emphasis has been put on training. A complete new training division was created as agreed to by the union at the onset of his tenure. This year, more than $1,700,000 will be spent on training. This includes a large one-time amount of $1,300,000 for investigative staff training. In FY 1988, the Commission's budget request will include an allocation of $750,000 for training.

The reorganization, as agreed to by the union, represents the Commission's best effort to complete its mission.

Any contracting out under A-76 provisions is done by regulation, and only after careful cost analysis and an analysis of the impact of such a move.

The Commission has consistently added staff to the Office of Review and Appeals in recent years, with the goal of speeding up the time involved in the appeals process.

The Commission shares many of your concerns, and it is believed that the funding requested for FY 1988, and the reorganization, will address and help resolve these issues.

Sincerely,

Deborah J. Graham

Deborah J. Graham
Director of Communications
and Legislative Affairs

✓cc: Honorable Ernest F. Hollings

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

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May 11, 1987

The Honorable Ernest Hollings
Chairman
Commerce, Justice, State & Judiciary Subcommittee
Appropriations Committee
Russell Senate Office Building
Room SR125
Washington, D.C., 20510

Dear Mr. Hollings:

The American Federation of Government Employees and National Council of EEOC Locals have reviewed the Presidents 1988 Budget request for the Equal Employment Opportunity Commission (EEOC) submitted to the Congress of the United States January 1987.

The following recommendations and changes to the Proposed Budget are submitted for your consideration and submission to the Appropriation Committees of the Congress.

EEOC Budget Programs II - Enforcement

That the 142 FTE be increased by 58 to 200 FTE's, in order to accomplish the projected reduction of pending inventory for each enforement program. It is anticipated that the reorganization of the agency's intake structure and process, the hiring and training of new personnel, and the retraining of current staff will have a severe impact on the projected reduction of pending inventory. The requested FTE increase should be sufficient to maintain current inventory levels during the first six (6) months of FY 88. Thereafter, it is anticipated that the level of productivity per employee will substantially increase bringing the inventory down to its projected level.

State and Local

The EEOC has presently pending before the Appropriations Committee a proposed reorganization of the Field EEOC, which will drastically impact on functions and services formally performed by the staff of the Intake/State and Local unit.

AFGE is seriously concerned about the failure of the EEOC Headquarters reorganization plan to address the need to provide for experienced professional employees to conduct contract credit reviews on a permanent on-going basis. The EEOC's omission seriously impacts the district offices because of the large number of reviews that need to be conducted every year. EEOC cannot adequately monitor the work being performed under some 70 agencies who are to process a projected FY 88 figure of 50,000 investigations and/or quasi-Judicial hearings for which EEOC will pay $20 million, without assigning adequate professional staff to get this job done.

AFGE recognizes that EEOC simply cannot perform the job that must be done unless sufficient allocations of professional personnel is provided to conduct the necessary reviews.

It is startling to think that for such a significant fiscal responsibility not one single professional employee (with the exception of an incredibly overtaxed state/local) will be permanently assigned these vital responsibilities under the reorganization plan as presently proposed.

The reorganization allocates a large number of human resources at the Headquarters level to the new Determination Review Program. At the same time, no permanent unit in the field offices is assigned to review and monitor the FEPA program which involves substantial expenditure of tax dollars. A charging party who files their charge with an Equal Employment Opportunity Commission district office may have the charge deferred to the FEPA or processed by the EEOC based upon mere chance. A charge processed by an FEPA still must be reviewed and failure to properly review these charges can result in termination of contract credit, increased caseload for the district office and decreased quality service to the public. If sufficient staff is assigned to this task to assure that the FEPA agencies are meeting the contractual standards, there will be less need for further processing at the district office level and the criticisms recently raised in a GAO inquiry will be resolved.

The rotation of a large number of investigatiors rapidly through this function will result in stability and predictability of results. The review function requires a knowledgeable and experienced professional employee who is capable of reducing to a clearly written report any deficiency in the FEPA's work-product that predicates a decision to deny contract credit. These decisions not only result in our non-payment for the FEPA's efforts, but also will, in most instances, result in the EEOC's having to assume responsibility for conducting an appropriate investigation. In addition, a heavy handed and non-remedial approach to these reviews could potentially jeopardize the certified status of an FEPA, which, in turn, will greatly increase the burden of conducting plenary substantial weight reviews by limited EEOC staff resources.

These operational concerns, inter alia, include the risk of inconsistent application of the substantial weight criteria. There is also the risk of delay in review, crediting, and, most seriously of all, delay in the payment for work performed under these federal contracts because of the diverse number of employees doing these reviews and the lack of direct supervision and accountability to the state/federal coordinator actually responsible for ensuring the timely accomplishment of this work.

Special Training Fund

As recognized in a report by staff of the Committee on Education and Labor it was pointed out that most District Offices training budgets are extremely limited with lack of money. District Offices mostly focus training programs on in-house capabilities.

The amount of formalized training provided to EOS's throughout the charge processing system is severly limited and consists of a melange of ad hoc programs which vary in length and quality depending upon the district office involved.

This training program, which may include class instruction of several weeks of directions for EOS's to simply read the laws and regulations within EEOC's jurisdiction, supplements the on-the-job-training which consistitutes most of the instruction which new EOS's receive. Training for more experienced EOS's in order to keep them abreast of the law is virtually non-existent.

The special funds is to be used for specific and intensive training for all Personnel including: Substantive and Procedural Training; On the Job Training and Employee Development Plans; Training for Newly Recruited Enforcement Personnel; and Cross Training for all Employees.

When the Reorganization is officially made effective, EEOC will be confronted by the training needs of at least three different groups of employees:

a. Current Intake Investigators who are being reassigned to enforcement units,

b. Current investigative Investigators who will be assuming intake duties on a far more frequent and formal basis, 1/ and

c. Newly hired Investigators who will conceivably have no experience with any of the Commission's laws, procedures, etc.

Our Intake staff members are well-versed in areas such as the jurisdictional requirements of our statutes, they are skilled interviewers and note-takers, and they are adept at drafting charges and advising the public.

Their training needs lie predominantly in the area of conducting investigations, e.g., crafting investigative plans and requests-for-information, analyzing evidence interviewing witnesses, writing investigator's reports, etc.

Our enforcement Investigators, of course, possess the skills which the Intake Investigators have not been required to develop. On the other hand, although they serve as backup to Intake on a rotational (and infrequent) basis, the time spent in that function has been minimal; and training must be provided to sharpening their skills in drafting charges. Further, they are virtually unaware of the mechanics of certain Intake procedures (as are their supervisors) which they may be required to perform in the future. And, to the extent that their case load has limited their exposure to certain types of investigations, some will need training in other techniques.

It is probably safest to assume that the newly hired investigators will have none of the specialized skills needed to perform their jobs well. The currently planned training conference for all investigator's to be held in Dallas, Texas during the month of June will not cover the reorganization of the field offices and the new no cause appeal process or the new immigration reform act.

1/ This group can be further subdivided into current RCP, ECP, and Systemic EOSs whose case-loads and case processing procedures and methods differ substantially.

This training program must include the upgrading of current transition from enforcement and compliance to investigation, enforcement and compliance. (This includes attorneys', EOSs and all support staff secretaries, paralegals, clericals) Headquarters-EEOC must be required to develop a formalized on going training program which will include a minimum of 80 hours per year per employee.

It is our determination that an amount of $500,000.00 be allocated for FY 88 Training Program.

Contracting Out A-76

In view of the past experiences and practices of EEOC we recommend that Headquarters EEOC be required to conduct a impact analysis on the cost effectiveness and the minority impact of contracting out services.

Currently the commission is comprised of 47% minorities, which includes women. In the past when the Commission has contracted out services it has replaced minorities with minorities and in one instance actually spent approximately $20,000.00 more to contract out services then it would have if the commission had retain the same personnel. The study should contain in detail all identified locations and instances where case processing work both clerical and professionals have been contracted out.

Office of Review and Appeals

AFGE believes this office has relinquished its role as an objective appeal forum for agencies and employees. It has assumed the role in the past year of providing training and guidance to federal agencies. The agency has a continual backlog of cases and currently, a decision on a case filed will be a year to twenty-four (24) months prior to receipt of a decision. Even with this tremendous backlog, the ORA is devoting its time and resources to conducting training in conjunction with other agencies on the matter of processing federal discrimination complaints and dispute resolutions. The matter of guidance, counselling and training properly is the function of the federal sector program office. The federal sector program office was designed to review and monitor the EEO processing federal agencies. ORA is conducting training for federal managers is relinquishing its intended role as an objective review board and devoting staff time that should in reality be devoted to case processing to training which should be conducted by other units of EEOC.

We object to the fact that it now is an accepted fact that a federal employee must wait two to five years prior to having a decision on a discrimination complaint. We recommend that the Federal Sector Program unit be required to monitor, review and assure compliance with the law. The ORA should return to the role of an objective review board.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BUDGET PROGRAM II - ENFORCEMENT SUMMARY

Programs Description

This budget program is responsible for the enforcement of the statutes under the Agency's jurisdiction: Title VII, ADEA, EPA, and with regard to the Federal sector, Section 501 of the Rehabilitation Act. Enforcement activities and the programmatic oversight and technical guidance for these activities are carried out by the offices listed below.

OFFICE	FTE	DOLLAR AMOUNT ($000)
District, Area and Local Offices	2506	119,158
Program Operations	142	9,881
General Counsel	113	10,288
Organizational Performance and Information Systems Services	74	7,582
Review and Appeals	107	6,777
Legal Counsel	62	3,702
State and Local	78	2,200
Special Training Fund	0	500
Total	3082	161,088

Summary of Program Request

	1987 Estimate		1988 Estimate		Inc. (+) or Dec. (-)	
	FTE	Amount	FTE	Amount	FTE	Amount
	2,804	137,532	2,946	155,788	200	+19,856
Special Training Fund			-0-	500		+ 500

Sincerely,

Barbara B. Hutchinson

Barbara B. Hutchinson
Director, Women's Department

Edward A. Watkins

Edward A. Watkins, President
National Council of EEOC
Local #216

SUBMITTED QUESTIONS

Senator HOLLINGS. We have additional questions which we will submit for your response. They will be inserted in the record at this point.

[The following questions were not asked at the hearing, were were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

AUTOMATION

Question. Other than purchasing stand-alone personal computers and some small printers, what kind of system are you installing?

Answer. The kinds of systems being installed are:

- o Interface software for communications between IBM systems and NCR systems.

- o Software for word processing on Unix operating systems.
- o Upgrade Supplies:
  Memory boards
  High speed input/output boards
  Tape drives

- o Laser Printers:
- o Multi-user personal computers for District Offices to be used to support inter-office networking.

Question. What will be the overall cost of your system?

Answer. The overall cost of this system will be $1,000,000. Of the $1,000,000 requested for FY 1988, $250,000 is to be used for replacing outdated word processing equipment with personal computers. The old equipment must be replaced, as it is becoming increasingly time consuming and expensive to maintain these dedicated word processors.

The upgrading of the hardware for the Charge Data System will cost $750,000. This upgrade is necessary in order to place the field offices in position to provide better service to the public, and to maintain an information system which will be more responsive to Congressional needs.

Basically, the upgrade will provide for six microcomputers and one shared laser printer for each of the 23 District Offices at a cost of $19,000 for each office, and 1 shared printer for 25 area/local offices at a cost of $11,500 for each office.

Question. Does the system include the purchase or lease of a mainframe computer?

Answer. No.

Question. Who will install and maintain the system, EEOC personnel or a contractor?

Answer. The system will be installed and maintained by both depending on the complexity of setting-up the equipment.

Question. Will the automated system that you are installing allow this new organization access to case data directly from the local/area offices?

Answer. Initially, charges under review will be tracked internally by a determinations Review Program data system. At a future date when the Commission's automated system is fully operational, we intend to interface the two data systems to allow transfer to charge information.

REORGANIZATION

Question. Why has the Commission decided that an appeal process is necessary?

Answer. The decision to review no cause determination is an effort to enhance the Commission's credibility and to better serve the public. Charging parties who receive no cause determinations will be certain that those findings were based upon thorough, impartial, and sound investigations.

Question. What do you anticipate will be the workload generated by cases forwarded for appeal?

Answer. Based on an informal review of other agencies' appeals programs, we expect to receive about 12,000 appeals or "requests for review" annually.

Question. Where will you get the staff for this new organization?

Answer. Immediate plans call for 34 positions to implement the new appeals program by internally reallocating positions from other HQ offices.

Question. Have you developed procedures for the appeal process?

Answer. The proposed rules implementing the Policy Statement on no cause determinations were published in the Federal Register on April 9. The comment period closed on May 11. The Commission is currently considering the comments submitted prior to finalizing the regulations.

Question. You already have a sizeable backlog of unprocessed cases, won't the appeal process create more backlog?

Answer. The Commission's commitment to the Determinations Review Program as an extension of its mission as a law enforcement agency requires and ensures that the Program will receive sufficient resources to meet the demands of the Program. Moreover, the Program will be staffed by senior level professionals who are familiar with the Commission, its procedures, and the laws it enforces. The Program will also rely heavily on computerization in order to expedite case processing.

Other changes to the Commission's charge resolution process should also help prevent development of a backlog. For example, there will be greater communication with the charging party during the investigation, and letters of determination will set out in some detail factual and legal bases for the decisions. Informing charging parties of the reasons for the Commission's determination should minimize the number of groundless requests. Initial investigations will be more thorough as a result of ongoing training of field investigators. This should greatly reduce the number of remands by the Program to the field for additional investigation. Indeed, Program staff will not do any investigations, thereby being able to devote full attention to case review.

All these steps should help to ensure that reviews will be accomplished in a timely and thorough manner, thereby avoiding the creation of a backlog.

RELOCATION OF HEADQUARTERS

Question. Are the Commissioners and the other senior managers of the EEOC included in the systems Furniture Estimate?

Answer. The Commissioners and other senior managers will not be using the systems furniture. However, their support staff will use systems furniture.

Question. Please provide a breakdown of the costs for the types of units you will be purchasing.

Answer. The $2,800,000 requested represents an estimated cost of $3,500 per unit for 800 employees. This figure was complied from the list of GSA approved manufacturers and suppliers from which systems furniture is available for purchase by the Government.

Question. Where this is a "Forced Move" imposed by the GSA, have they made provisions in their Fiscal Year 1988 Budget to Fund the relocation expenses?

Answer. Yes, because it's a forced move.

Question. Will the actual relocation be made at one time or will it be phased over several months?

Answer. Yes, over a period of weeks.

Question. What impact will the move have on SLUC payments, i.e., will the Commission pay for only the space occupied, or will GSA bill simultaneously for both occupied and unoccupied space?

Answer. No, there will be no duplicate payments.

EEOC AUTOMOBILES

Question. Are you satisfied that proper controls and procedures are in effect to preclude the unauthorized use of these vehicles?

Answer. Yes, we are not aware of any fraud or misuse of government vehicles, nor have any potential problems been brought to the attention of our auditors.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

REORGANIZATION

Question. What is the status of the present reorganization proposal? Will the Office of Personnel Management review the plan?

Answer: We have just completed negotiations with the National Council of EEOC Locals #216 on the implementation and adverse effect of the reorganization. We have also been advised that the House and Senate Appropriations Committees have approved the proposed reorganization.

It is not required for the Office of Personnel Management (OPM) to review the reorganization plan. It is, however, required that EEOC's Personnel Management Services review the proposal to ensure that it comports with OPM regulations. This was done at every step of the internal reorganization process.

Question. How do you plan to address the Intake Supervisor position? Have you considered upgrading these positions (which are presently GS-11) to GS-12/13 positions? How many years of service does the average Intake Supervisor have in a management position? Wouldn't it make more sense in a reorganization to utilize these management skills?

Answer. Through negotiations with the union representatives it was agreed that the functions of the State and Local Coordinator and the Charge Receipt/Technical Information Unit (formerly Intake) supervisor will be kept separate. The first one, at a GS-12, will be located under the Enforcement Management Group; the second one will be a supervisory position GS-11. It is expected that all current Intake supervisors will remain as supervisors of the Charge Receipt/Technical Information Unit at their present GS-11 level.

We had considered upgrading the supervisory position when we initially proposed the merger of the two functions into one position. As it stands right now, after completion of negotiations, the functions assigned to the Charge Receipt/Technical Information Unit supervisor result in a classification no higher than the GS-11 level. We do not have at hand the average years of service in a management position of the Intake supervisors. We do know, however, that many of them have been successfully occupying those positions for several years. It is certainly to our benefit if we can continue making use of their management skills.

Question. Will you please keep me informed of the reorganization process and, specifically, its effect on Intake Supervisors?

Answer. We will keep you advised on the progress of the reorganization.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

BIENNIAL BUDGET PROCESS

Question. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

Answer. A biennial budget process would save staff time in preparing budget justifications and allow more time for budget planning and execution.

Question. Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission?

Answer. EEOC is a salary intensive agency and has little discretionary funding. For FY 1988 $180 million out of EEOC's budget request of $193 million was targeted to support current services.

Question. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

Answer. A detailed budget plan would be necessary for the second year of the appropriation. The two-year concept could trigger budget amendment/ supplemental requests when programmatic changes are approved by the Commission after the initial request has been submitted to Congress.

Question. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

Answer. Actual dollar savings would be minimal.

Question. If you oppose the biennial budget concept, please give this subcommittee your reasons why.

Answer. The administration is studying the subject of multi-year budgeting and whether to propose biennial budgeting for appropriation for accounts other than those in the National Defense area. Biennial budgeting would appear to have substantial advantages to a number of agencies. The Equal Employment Opportunity Commission does not oppose the concept.

SUBCOMMITTEE RECESS

Senator HOLLINGS. This concludes our hearing for today. The subcommittee will stand in recess until tomorrow, Wednesday, May 13, at 10 o'clock, when we will hear testimony from the nondepartmental witnesses.

[Whereupon, at 10:57 a.m., Tuesday, May 12, the subcommittee was recessed to reconvene at 10 a.m., Wednesday, May 13, 1987.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1988

WEDNESDAY, MAY 13, 1987

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m. in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings and Sasser.

NONDEPARTMENTAL WITNESSES

OPENING STATEMENT OF SENATOR HOLLINGS

Senator HOLLINGS. Good morning. The subcommittee will come to order. Normally, the ranking Republican member, Mr. Rudman, would be here, but he is involved in the Iran-Contra hearings. Senator Rudman wanted to join me in welcoming you here this morning, along with the other members of the subcommittee.

We are going to receive testimony this morning from public witnesses with regard to the 1988 requests of the Departments of Commerce, Justice, State, and Judiciary. We always are pleased to have public witnesses, because you are the interested individuals and endorse the viewpoints of those that are out in the country and have participants with interest in these programs.

We are delighted to have you all here this morning. Unfortunately, we are on a tight schedule. We have a budget conference that I am supposed to be at within an hour. Because of the large number of witnesses, we will have to ask that you limit the testimony to 3 minutes.

The full statements will all be included in the record and be reviewed by the Senators and their staffs before markup.

Our first panel will be making their comments on the Economic Development Administration and the International Trade Administration. We will hear from John McAllister of Mount Carmel, SC, followed by Ms. Patty Martillaro and Mr. Harold W. Williams. We welcome them and are glad to hear from you at this time.

ECONOMIC DEVELOPMENT ADMINISTRATION

STATEMENT OF JOHN McALLISTER, MAYOR, MOUNT CARMEL, SC, ON BEHALF OF THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Mr. McALLISTER. Mr. Chairman, members of the subcommittee, special guests, I am John A. McAllister, mayor of Mount Carmel, SC. I am a board member of the Upper Savannah Council of Governments, which is an economic development district sponsored by the Economic Development Administration and also a Small Business Administration Certified Development Corporation.

The Upper Savannah Council serves six counties in South Carolina, Abbeville, Edgefield, Greenwood, Lauren, McCormick, and Saluda, with a total population of 178,300 people.

I appreciate the opportunity to testify today as a representative of the National Association of Development Organizations [NADO].

Mr. Chairman, I especially appreciate your support for the Economic Development Administration [EDA] over the past several years. For all metropolitan and rural communities, EDA is a Federal development program that has been of great value because of the types of assistance it makes available for planning, technical assistance, public works and revolving loan funds.

The Federal funds which are provided by EDA are investments returning tax revenues, not a one-shot expenditure. EDA dollars help rural areas create jobs and provide income.

As an example, the Economic Development Administration has aided the upper Savannah region in South Carolina, a small rural region, by providing funds for infrastructure development that have resulted in a direct creation of new jobs, increasing the tax base and the promotion of tourism in our area.

Since 1968, EDA's investment in the upper Savannah region; has totaled $6.4 million. This investment has resulted in a direct creation of approximately 3,400 jobs at a cost of only $1,886 per job. This total does not include the hundreds of construction jobs that have been created by the EDA products.

To date, these jobs generate an annual payroll of $33.9 million, assuming an annual salary of $10,000 per job or $5 per hour. This annual payroll will result in over $4 million in Federal income taxes and over $1 million in State income taxes for this year alone. Since 1970, EDA's investment has generated over $28 million in payrolls, $34 million in Federal taxes, $8.5 million in State taxes.

The EDA's investment in the six counties of upper Savannah has returned more than five times the original cost to the Federal Government. This, in my opinion, is a fantastic investment. Besides the monetary returns that EDA has brought to the region, EDA's investment has greatly improved the total infrastructure of our region and provided essential services, such as water and sewer to low- and moderate-income individuals.

EDA has also helped to promote tourism, mainly through the Hickory Knob State Park, which last year was visited by almost 300,000 persons and helped to expand the tax base and diversify the industrial base of our region.

Senator HOLLINGS. Mr. McAllister, we are going to have to ask you to hold up and make room for quite a few other witnesses here. We will include the entire statement. We understand full well what we are doing. We are going to provide for the SDI and send you the bill. [Laughter.]

We are going to send the mayors a bill. We are going to take away your revenue sharing; we are going to take away your UDAG projects; we are going to take away your EDA so we can have all of these B–1 bombers that can't fly and M–1 tanks that can't get across the desert without a filling station chasing them, and SDI and send you the bill, at the local level.

It is unfortunate, and we are trying to correct it very much.

[The prepared statement of Mayor John A. McAllister follows:]

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Testimony of:

John A. McAllister

On Behalf of The

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Mr. Chairman, members of the Subcommittee on Commerce and Justice, I am John A. McAllister, Mayor of Mount Carmel, South Carolina. I am a Board Member of the Upper Savannah Council of Governments which is an Economic Development District (EDD), and a Certified Development Company under the Section 503/504 program of the Small Business Administration (SBA). The Upper Savannah COuncil serves six counties in South Carolina--Abbeville, Edgefield, Greenwood, Laurens, McCormick and Saluda--with a total population of 178,300.

I appreciate the opportunity to testify today as a representative of the National Association of Development Organizations (NADO).

Mr. Chairman, I especially appreciate your support for EDA over the past several years. For small metropolitan and rural communities, EDA is the federal development program that has been of greatest value because of the types of assistance it makes available for planning, technical assistance, public works and revolving loan funds.

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

NADO was founded in 1967 by a group of economic development districts to encourage the creation and retention of jobs in rural and small metropolitan areas. Today our members are multi-county planning and development organizations and other state and local agencies which help local governments and the private sector work together on business, community, economic and rural development programs. With a small Washington staff and a strong grassroots network we carry out a number of information, training and service functions.

DEVELOPMENT DISTRICTS

For thousands of communities, development district staffs provide the only professional assistance to governments, businesses and citizens in the field of economic development. By working cooperatively through development districts, local governments and the private sector can maintain and create jobs with a minimum of control from Washington and maximum local participation. Development districts have become an essential part of the "institutional infrastructure" in much of rural America.

EDA planning grants provide funds to 283 development districts in 47 states for activities which assist local governments to become more efficient local businesses to survive and expand. Although the amount per district is very small ($50,000 average), it provides the vital professional staff capability which gives small communities access to development expertise. Loss of these funds would be very harmful to local economic development efforts. Now, more than ever, the districts are essential for the economic well being of many rural local governments.

For small metropolitan and rural communities, the Economic Development Administration (EDA), Appalachian Regional Commission (ARC), Farmers Home Administration (FmHA) and Small Business Administration (SBA) are the federal development programs which have been of the greatest value.

ECONOMIC CONDITIONS VARY WIDELY

NADO's members serve rural and small metropolitan areas across the country. In the areas where our members work, they are concerned about the economic well-being of an entire region rather than a single jurisdiction. If a rural (or urban) area's economy is depressed and its resources are under utilized, the entire country should be concerned and efforts should be made to help people to improve their situation. That is what EDA has done over the past 20 years -- helped local people to create jobs by making public investments which encourage private investment.

I would also like the subcommittee to consider the particular problems which continue to be faced by many rural areas and small cities.

RURAL ECONOMIC DEPRESSION

The general economic recovery of the past several years has bypassed many rural areas. In each region of the country, the metropolitan areas are outperforming the rural areas. Preliminary results of a survey done by the Appalachian Regional Commission on the economic conditions of the nation's counties from 1970 to the mid-1980's show that a two-tier economy is developing. Their study shows that the economies of a large number of counties extending from Canada to the Gulf of Mexico are performing poorly. The urban areas of the East and West and some areas in the South are enjoying economic prosperity, but rural areas in the same regions are not faring as well.

Some of the findings in the study include:

* It is evident that the benefits of the recovery and prosperity in the United States are not being enjoyed to the same extent in all areas of the country. Some regions are clearly endowed with a higher number of better-performing counties than are other regions.

* In each region of the country, the metropolitan areas are outperforming the rural areas. The decade of the seventies saw a short-lived surge in growth in rural counties and small towns, which was a reversal of the farm-to-city movement that started at the beginning of the century. By 1980 the trend reversed and outmigration from rural areas was again the norm.

* The effect of the decline in manufacturing employment in the U.S. is markedly evident. Areas that depended on traditional manufacturing, have been shaken by the dwindling relative role of manufacturing as an employer in the U.S. economy.

* Those areas that are still heavily dependent on textiles, apparel, shoes and wood products as a source of manufacturing growth are losing out.

In addition to the problems identified in the ARC study, there are serious problems in many of the extractive industries such as mining, timber and fishing which are located in rural areas. Except for precious and strategic minerals, the mining industries throughout the country are having major problems. In the timber industry employment has been lost because of mechanization and import competition.

The growth of the service economy is also bad news for rural areas. Both business and personal services depend on large numbers of businesses and people as customers. Professional service providers depend on state-of-the art communications and good transportation. One of the results of deregulation for rural areas is the loss of airline service and many local rural telephone companies have inadequate systems for high-technology transmission.

Experts say that there is a rural economic crisis in all but 20 to 25 percent of nonmetropolitan counties. Rural areas that are prospering include resort and retirement areas that are enjoying an inflow of private and government pension and Social Security money.

THE RETURN ON FEDERAL INVESTMENTS BY EDA

We believe that the federal government has a responsiblity to encourage, in fact to foster, economic development and economic diversification in rural and urban areas. Not all communities are equally endowed with economic resources and the effects of broad macro-economic policies do not fall evenly across the land. Many big cities and major metropolitan areas are now experiencing an urban revival thanks in part to federal investments through programs like the Community Development Block Grant and Urban Development Action Grant programs.

For small metropolitan and rural communities, EDA is the federal development program that has been of the greatest value because of the types of assistance that it makes available for planning, technical assistance, public works and revolving loan funds.

The federal funds which are provided by EDA, are investments returning tax revenues, not one-shot expenditures. EDA dollars help rural areas create jobs, improve incomes and leverage private sector funds.

As an example, the Economic Development Administration has aided the Upper Savannah region of South Carolina, a small rural region, by providing funds for infrastructure development that have resulted in direct creation of jobs, increase in the tax base and the promotion of tourism in our area. Since 1968, EDA's investment in the Upper Savannah region has totaled $6.4 million. This investment has resulted in a direct creation of approximately 3,400 jobs at a cost of only $1,886 per job. This total does not include the hundreds of construction jobs that have been created by the EDA projects

To date, these jobs generate an annual payroll of $33.9 million, assuming an annual salary of $10,000 per job or $5.00 per hour. This annual payroll will result in over $4 million in federal income taxes and over $1 million in state income taxes for this year alone. Since 1970, EDA's investment has generated over $281 million in payroll, $34 million in federal taxes, and $8.5 million in state taxes. The EDA investment in the six counties of Upper Savannah has returned more than five times the original cost to the federal government. This, in my opinion, is a fantastic investment.

Besides the monetary returns that EDA has brought to the region, EDA's investment has greatly improved the total infrastructure of our region and provided essential services such as water and sewer to low and moderate income individuals. EDA has also helped to promote tourism (mainly through Hickory Knob State Park which last year was visited by almost 300,000 persons) and helped to expand our tax base and diversify the industrial base in our region.

Mr. Chairman, I think that you can see from the above numbers that EDA probably provides more jobs and returns more tax dollars to the U.S. Treasury than any other program. We at the local level certainly realize the importance of balancing the national budget. However, we also realize the importance of continued development and job creation at the local level. For the small amount of funds that EDA has to do its job, we feel it provides a tremendous service to our local governments. We encourage you and the members of the subcommittee to continue to provide funding for the Economic Development Administration programs in 1988.

CURRENT EDA PRACTICES

NADO members are supportive of Assistant Secretary Orson Swindle's intention to focus EDA's efforts in rural areas. We are pleased to see his interest and continue to offer our assistance to improve existing EDA programs.

SMALL BUSINESS ADMINISTRATION SECTION 503/504 PROGRAM IS ESSENTIAL

One example of how districts serve as a development resource is our involvement in the SBA Section 503/504 program. Approximately half of the Small Business Administration's Section 503/504 Certified Development Companies were established on a regional basis by development districts. By using the 503/504 program, many small businesses have been able to obtain guaranteed loans for fixed asset financing in combination with private funding. Without the institutional infrastructure established by EDA, certified development company financing would not be available in small metropolitan and rural areas.

FEDERAL DEVELOPMENT PROGRAMS FOR RURAL AREAS DRASTICALLY REDUCED

Federal grant and loan programs of considerable concern to NADO members were cut by 61 percent from 1980 to 1987. The Reagan administration's fiscal 1988 budget would bring the reduction since 1980 to 67.5 percent. Nearly one-third of the reduction from 1980 to 1987 was the termination of General Revenue Sharing, but the rest of the cut was spread among many smaller programs. The fact is that the Administration and the Congress have eliminated some programs and severely curtailed others, including EDA, ARC and FmHA.

EDA, ARC, AND FMHA PROGRAMS ARE MOST IMPORTANT TO RURAL AMERICA

A NADO staff examination of the flow of federal funds to localities for infrastructure-related purposes reveals the importance of Economic Development Administration (EDA), Appalachian Regional Commission (ARC), and Farmers Home Administration (FmHA) nonfarm programs to rural America. In the wake of the termination of General Revenue Sharing, rural communities are facing continuing threats to federal aid for infrastructure-related functions important to their economic futures. Some would-be federal budget cutters and policy arbiters would eliminate EDA, ARC, and FmHA nonfarm rural development programs and reduce both Community Development Block Grants (CDBG) and Environmental Protection Agency (EPA) wastewater programs. In the absence of EDA, ARC, and FmHA programs, CDBG and EPA wastewater grants would be the only federal funding sources for important infrastructure projects.

An analysis of the total of both CDBG (entitlement and nonentitlement) and EPA (Construction Grants for Wastewater Treatment Works, 205(j) Water Quality Management Grants, 205(g) Construction Management Assistance Grants, and State and Interstate Water Pollution Control Program Grants) funding allotments shows that 13 states (New York, California, Illinois, Pennsylvania, Ohio, Texas, Florida, Massachusetts, New Jersey, Michigan, Indiana, Maryland, Missouri plus Puerto Rico) got 65.1 percent of the fiscal 1986 funds. The other 38 states got less than two percent, for a total of 34.7 percent. More significantly, 21 states got less than one percent each, for a total of only 10.2 percent. For this latter group of predominantly rural states, funds from EDA, ARC, and FMHA are very important. Relatively small grants and loans from these three sources loom larger in the context of limited amounts from CDBG and EPA.

Below the statewide level, EDA, ARC, and FmHA are particularly important to distressed rural areas. In the aggregate, over 70 percent of the CDBG funding and perhaps 75 percent of the EPA money goes to metropolitan cities and counties. On a state-by-state basis, the small cities' share of CDBG funds is as little as eight percent. In more rural states the percentage of funds going to nonmetropolitan communities may be high but the dollar amount is relatively small. Several states received less than $1.5 million in nonentitlement CDBG funds in 1986.

WHY ARE EDA AND SBA PROGRAMS IMPORTANT?

A. The traumatic restructuring of the rural economy is now underway. Study after study is now showing that the economic recovery has by-passed rural America and that the U.S. is developing a two-tier economy -- an expanding urban one and a declining rural one.

B. While a program like EDA is so small that it has virtually no impact on the federal budget deficit, EDA funds are important to small communities because they provide development money not otherwise available. Rural areas and their local governments have few or no development professionals, but EDA-funded districts provide help not otherwise available.

C. From 1980 to 1987, federal programs designed to help rural development were cut a much greater percentage than those targeted to urban areas.

D. The federal investments in programs like EDA and SBA are highly leveraged and stimulate private sector growth and job creation.

E. Of the EDA public works funds, 83 percent were for projects in areas with unemployment of eight percent or above and 59 percent were in areas with unemployment of 10 percent or more in fiscal 1986.

G. Because of the downturn in agriculture, rural governments are beginning to see a decrease in property tax collections as the value of land declines and more farmers are going bankrupt. The aggregate value of farmland fell 35 percent ($271 billion) between 1981 and 1986. There has also been an increase in the interest rates that rural localities pay on bonds they issue.

H. The farm bill may help farmers but worsen the outlook for rural communities because it encourages farmers to idle more acres of farmland which will result in a decrease in farmers'purchases.

I. Experts believe that recovery in the agricultural sector is three to five years away. While the full effect of the farm crisis has not yet been felt, three very rural states--Montana, West Virginia and Mississippi--actually saw a decline in their per capita income during the last quarter for which statistics are available (second quarter of 1985). In addition, recent declines in petroleum prices are depressing incomes in rural areas dependent on employment in coal, oil and natural gas production.

J. International competition in traditional rural manufacturing, e.g., clothing and textiles, has literally destroyed the economic bases in many rural communities.

K. It is highly unlikely that state governments will be able to fill the financial gap that would be created by a loss of programs such as EDA. Total state tax receipts declined in ten states for the year ending in September 1986 versus the year ending in September 1985 (Alaska, Kansas, Louisiana, Minnesota, Montana, North Dakota, Oklahoma, Oregon, Texas, and Wyoming). State corporate net income tax receipts fell in 22 states. Already this year 23 states (including South Carolina) have been forced to reduce their budgets, reflecting the impact of widespread recession conditions.

CONCLUSION

Mr. Chairman we ask that you and the members of the subcommittee continue to provide funding for the Economic Development Administration programs in 1988, because these funds are of vital importance to thousands of small and medium-sized communities across the country who are working with the private sector to maintain and create new jobs. EDA was created in response to patterns of economic distress that were largely due to previous public policies and their interplay with the private economy. Unfortunately, these conditions persist in many regions and subsequent governmental actions have added new areas to the ranks of distressed places. We also urge that you continue to provide funding for the Small Business Administration, particularly the 503/504 Certified Development Company program, which has been instrumental in creating thousands of new jobs.

NADO supports enactment of the National Development Investment Act (H.R. 10) as a sensible way for the federal government to help localities -- rural and urban -- to help themselves. Our members understand the need for existing EDA and ARC programs to be updated to deal with the economic realities of the 1980's. NADO supports funding for the current EDA program at least at 1987 levels until new authorizing legislation is signed into law.

Again, let me thank you for your support of EDA and SBA. I will be happy to answer questions.

EDA University Centers

STATEMENT OF PATTY MARTILLARO, PRESIDENT, NATIONAL ASSOCIATION OF MANAGEMENT AND TECHNICAL ASSISTANCE CENTERS

Senator Hollings. We would be glad to hear from you, ma'am.

Ms. Martillaro. Thank you. I am Patty Martillaro, president of the National Association of Management and Technical Assistance Centers, or NAMTAC. NAMTAC's goal is to bring the resources of our universities to the areas of greatest need by assisting businesses and communities in economic development.

I have three requests: first, that this committee recommend continued funding for the Economic Development Administration for fiscal year 1988; second, that you reaffirm and continue your support for university centers within EDA by earmarking, as you have done in the past, $5 million for university centers; and third, that you express your disapproval of the intention of the Assistant Secretary for Economic Development to establish a graduation policy for centers and direct him to abandon that policy. It would be unfortunate at a time when rural America is in crisis to take away the program that helps it attain its economic potential. NAMTAC urges your support for maintaining EDA at its present levels and to continue support within the EDA appropriation of $5 million for university centers. The University Center Program is one of EDA's best programs. For a small outlay, the resources of our educational institutions are made available to help communities and business with economic development.

There is a very real danger to the University Center Program stemming from a misconception of its purpose by the Assistant Secretary for Economic Development. He has announced in the Federal Register his intention to graduate the older, more successful university centers beginning in 1988. A — percent reduction will take place over a 3-year period until 1990, when no funding would be provided.

The announcement provides no justification, and this graduation policy makes no sense. We find it hard to accept the EDA rationale that, by graduating the experienced, successful centers, EDA can then start new centers. In fact, EDA has not used the full $5 million mandated by Congress for support of university centers. A large portion of the $5 million has been diverted to other projects. If EDA wants to fund new centers, there are ample funds and $5 million to do so; without graduating any centers.

We ask this committee to direct EDA in language that becomes a part of the Appropriation Act to rescind its intention of graduating experienced, successful centers. We ask that you direct the Secretary of Commerce to continue to support EDA University Centers, and moreover, we ask the committee to direct EDA to use the full $5 million for direct support of university centers and not to divert the funds.

In conclusion, continue EDA; continue funding for university centers at $5 million; and stop the Assistant Secretary from putting into effect an ill-advised graduation policy that would waste funds and seriously harm our needy communities. Thank you.

Senator HOLLINGS. Thank you very much.

[CLERK'S NOTE: Subsequent to the hearing, the subcommittee received a letter from Hon. Orson G. Swindle III, relating to the above testimony, which also has been made part of the record.]

[The prepared statement of Patty Martillaro and Assistant Secretary Swindle's letter follows:]

Statement of

Patty Martillaro

President

National Association of Management and Technical Assistance Centers

NAMTAC

and

Director, Small Business Assistance Center

University of Colorado

Mr. Chairman, my name is Patty Martillaro, and I am the Director of the Small Business Assistance Center of the University of Colorado at Boulder. I appear before you today in my capacity as president of the National Association of Management and Technical Assistance Centers, which goes by the acronym, NAMTAC.

The goal of NAMTAC is to further the transfer of knowledge and information through institutions of higher education for practical application on behalf of industrial competitiveness and economic development. We provide a strong central forum for our members. We help them develop their professional skills; and we inform the public of their accomplishments. Virtually all of our members are affiliated with institutions of higher education. They run the gamut from a highly sophisticated research institutions like my own University of Colorado to smaller state universities as well as traditionally Black institutions such as Benedict College in South Carolina.

About half of our members are University Centers that are authorized under Section 301 (a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151 (a). I am testifying today on behalf of these Centers. I have three requests:

First, that this Committee recommend continued funding for the Economic Development Administration for fiscal year 1988.

Second, that you reaffirm and continue your support for University Centers within the EDA appropriation by earmarking, as you have done
in the past, $5,000,000 for University Centers.

And third, that you express your disapproval of the intention of the Assistant Secretary for Economic Development to establish a "graduation policy" for Centers, and direct him to abandon that policy.

First, as to EDA, itself. The Economic Development Administration, although it is a relatively small agency, has been a lifesaver for many rural communities in virtually every State. Although the Administration has tried its best to abandon EDA in every possible way, it is Congress that is in touch with the feelings of the people and Congress that has understood the strong grass roots support that EDA has. And it has such support because it has delivered much needed assistance that has helped many communities preserve their economic lifeblood. It would be unfortunate indeed, at a time when rural America is going through a terrible crisis, to take away the program that helps it attain the infrastructure it needs to preserve its economic potential. NAMTAC urges your support for maintaining EDA at its present levels.

Our second request is to continue support within the EDA appropriation at this year's level of $5,000,000 for University Centers. The EDA University Center program is one of the agency's best programs. For a relatively small outlay, the resources of our educational institutions are made available to help communities with their economic development.

That help takes a wide variety of forms. For example, my own university is presently conducting an agricultural export project funded under an incentive grant of the EDA University Center program. We have helped develop direct mail programs and staffed booths at trade fairs both in the United States and abroad. In our first year of operation, we expanded our State's export agricultural sales by more than $1,000,000. Items exported ranged from gourmet food items to the sale of lamb offal.

Each year NAMTAC conducts a project-of-the year competition to recognize the successful programs of our members. Here are some of the accomplishments of our university center winners:

*The Pennsylvania Technical Assistance Program of the Pennsylvania State University helped turn a business that was failing into one that was expanding by providing the technology that helped a specialty fiber producer develop a new filament yarn for static control carpets.

*Iowa State University's Center for Industrial Research and Service provided a wide range of services to the Governor of Iowa in the formation and operation of the Iowa High Technology Council. As a result, the State has received new research awards and is moving forward on technology development.

*The Technical Assistance Center at Auburn University helped a fertilizer company develop and implement an aggressive growth strategy that increased sales by 131% with a 47% increase in the workforce.

*The University of Nebraska's Technical Assistance Center was the means by which university professors were located to help a manufacturer of high efficient electric water distillers solve problems of cracks and corrosion.

Customer confidence was restored and additional employees hired.

*The Center for Economic Development and Business Research at Jacksonville State University in Alabama prepared an economic plan for a city of 6000, and after its recommendations were put into effect, new industries and additional jobs were established.

*The Center for Economic Development of the University of Texas at San Antonio provided the necessary management assistance that permitted a new minority-controlled electric components manufacturer complete a successful employee buyout, saving 250 jobs.

*The Regional Economic Development Center at Memphis State University did the market study and completed the loan packaging that led to the establishment of a new plant for the production of plastic film in a small depressed Tennessee community, and 26 new jobs were created in the first year.

*The Center for Regional Progress at Marshall University in West Virginia provided expert assistance to the state government on export development. It sponsored workshops, conducted research on export matters and provided direct assistance to exporters.

These are just some examples of the many and varied ways by which University Centers contributed to the economic development of areas suffering from high unemployment or underemployment. We believe that the Congress and your Committee can justifiably take great pride in having created and supported this valuable program over the years.

My third request has to do with a very real danger to this program stemming from a misconception of its purpose by the present Assistant Secretary for Economic Development. He has announced in the Federal Register his intention to adopt a new policy beginning with fiscal year 1988 funds to "graduate" the older University Centers. Centers that were started before October 1, 1981 would lose 20 to 30 percent of their EDA funding next year, and this reduction would increase from 40 to 60 percent in fiscal year 1989 and 50 to 75 percent in 1990. No funding would be provided thereafter. For centers funded after October 1, 1981, similar "graduation policies" are proposed.

While the announcement of this policy provides no justification for it, the Assistant Secretary has on other occasions stated that he thought that it would be fairer to graduate the older centers, thereby making it possible for EDA to fund new University Centers.

Such reasoning fails to appreciate the purpose of Congress in authorizing the University Center program and providing funds for its support. The University Center program is not designed to help or support universities. That is not the purpose of EDA. The program is designed to help areas of high unemployment and underemployment. University Centers are instruments of Federal policy to accomplish the goals of the Public Works and Economic Development Act of 1965. It makes no sense, therefore, to reduce funding for and "graduate" the more successful and experienced centers, and replace them with centers that have no experience. It takes three to four years for a Center to get up to speed and become really effective at helping to promote economic development. Most of the winners of our annual awards competition are the older centers. If EDA is allowed to put its proposed "graduation" policy into effect, the Nation's eligible redevelopment areas will be short-changed. Another consideration to keep in mind is that many of the most effective Centers are able to leverage EDA funding and attract a considerable amount of additional funding, usually from their State governments. Such additional funding does not come in the first two or three years, but only after the Center has proved its worth. If Federal funding begins to drop after State funding begins to come in, the leverage is effectively reduced and the overall program suffers. We find it hard to accept the EDA rationale that reduction of funds for the experienced, successful centers will enable EDA to start up deserving new centers. In fact, EDA has not used the full $5,000,000 mandated by Congress for support of University Centers. A large portion of the $5,000,000 has been diverted to projects that can only remotely be connected to the University Center program, but which are not used to support University Centers. If EDA were really sincere in its desire to fund new centers, there are ample funds in the $5,000,000 provided by Congress to do so without jeopardizing the effective programs of the most experienced centers.

We at NAMTAC say: "If a Center is not performing satisfactorily, it does not deserve to be funded. But if a Center is doing well, do not penalize the communities it serves by slashing its financial support." We ask this Committee to direct EDA in unambiguous language that becomes a part of the appropriation Act to rescind its intention of reducing support for experienced centers that are performing satisfactorily. We ask that you direct the Secretary of Commerce to continue to support EDA University Centers as long as they are doing well what they are supposed to do and as long as the Congress is providing appropriations for that purpose. Moreover, we ask the Committee to direct EDA to use the full $5,000,000 in apropriations for direct support of University Centers and not to dilute the effect of the funds by diverting University Center funds to peripheral projects only remotely related to the operation of a University Center.

This is the year of "competitiveness." The President supports programs to improve the "competitiveness" of our industries. Members of Congress have signified their intention of framing and adopting measures that will help United States industry regain and improve its "competitiveness." Industry, labor and the public at large have responded positively to the need to make our factories and businesses more competitive. The University Center program hits the "competitiveness" targets right in the bullseye. Our University Centers help governments make their communities more competitive for industry. Our Centers help businesses become more competitive. We are the means by which the unparalleled intellectual resources of our institutions of higher education are focused on economic development, particularly in our communities of high unemployment or underemployment. Help us to continue to help our communities and our businesses become more competitive. Continue the Economic Development Administration. Continue funding for University Centers within EDA at the level of $5,000,000. And stop the Assistant Secretary for Economic Development from putting into effect an ill-advised "graduation" policy that would waste funds and seriously short-change our needy communities.

Thank you. I will be pleased to answer your questions.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Economic Development
Washington, D.C. 20230

Honorable Ernest F. Hollings
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary
and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your Subcommittee recently heard testimony from Patty Martillaro, Executive Director of the Small Business Assistance Center, University of Colorado, and President of the National Association of Management and Technical Assistance Centers. In that testimony (a copy of which is enclosed), Ms. Martillaro urged that the Economic Development Administration (EDA) be refunded for FY 1988, that $5 million of the EDA budget be earmarked for the University Center Program, and that the Assistant Secretary for Economic Development be directed to abandon his University Center graduation policy.

Ms. Martillaro and I disagree on these issues. Her testimony contains several misleading and erroneous statements, which I have discussed with her and would like to address for the record:

1. "The University Center Program is one of the Agency's best programs."

The Reagan Administration does not believe that any of EDA's programs warrant continued support in this era of scarce resources. While this particular program cannot be faulted for building replicas of pyramids or guaranteeing loans for companies with only marginal prospects for paying their debts as has occurred in other EDA programs, the University Center Program has gained its own form of notoriety. In September 1986, the Inspector General of the Department of Commerce issued a final audit report on the University Center Program. That report concluded that University Centers grossly exaggerate the number of jobs and investments created or generated as the result of their assistance. The Inspector General was able to verify only one percent of the claims made by the University Centers in their 1983 annual reports. Subsequently, Senator Proxmire awarded EDA (why not his Congressional colleagues?) the "Golden Fleece" award for its continued operation of the University Center Program.

While we did not agree with all of the facts or conclusions presented by the Inspector General's report, neither do we believe that the University Center Program is one of EDA's "best" programs. We do, however, believe that colleges and universities can make unique contributions to the economic development of distressed areas, and are taking steps to improve the program's effectiveness by, among other things, spreading its benefits to places not previously served.

2. "The Federal Register announcement regarding the implementation of the University Center graduation policy provides no justification for that policy."

The justification for the graduation policy is clearly implied in the Federal Register announcement, and is certainly known to the directors of EDA-funded Centers. Section I of the announcement states that University Center grants "are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas." The term "seed money" is commonly used to describe temporary funds provided to assist in establishing a program. "Seed money," to my knowledge, has never been used to describe funds that are provided in perpetuity.

Moreover, the day prior to the publication of the Federal Register announcement, I wrote to the president of each participating college or university, other than those of the historically Black colleges and universities. (EDA's experience with and knowledge of the resource problems confronting historically Black colleges and universities led to a decision that, at least initially, the policy on discontinuing funding after seven years would not apply to Centers at such institutions.) In that letter, I clearly stated that EDA would use the funds made available under the graduation policy to assist other colleges and universities establish programs which address the economic development problems of the areas they serve.

3. "The graduation policy fails to appreciate the purpose of Congress in authorizing the University Center Program."

Congress never formally authorized the University Center Program. Title III of Public Law 89-136 describes EDA's technical assistance program and lists a number of entities eligible to participate in it. It does not specifically list colleges or universities as eligible entities, but EDA has interpreted "other suitable organizations" to include colleges and universities. EDA, not Congress, originated the concept of the University Center Program as an informal demonstration in the late 1960s.

It was not until the late 1970s that Congress acknowledged the existence of the University Center Program, when the Appropriations Committee inserted University Centers as a line item in the Agency's budget. EDA's Authorizing Committees, which are charged with the responsibility for the substance of EDA's programs, have never provided guidance regarding University Centers. Under the circumstances, it seems inappropriate to claim that EDA's graduation policy is contrary to Congressional purpose in authorizing the program.

4. "The program is designed to help areas of high unemployment and underemployment. If the graduation policy is put into effect, the Nation's eligible redevelopment areas will be shortchanged."

This argument contains several errors. First, it implies that all Centers focus their activities in areas of high unemployment and underemployment. In practice, many University Centers limit their assistance to areas within a reasonable commuting distance. These areas may have been the most distressed in the state at the time of the initial funding, which in many cases was approximately 20 years ago. Today, however, other areas of the state often have greater levels of economic distress and do not enjoy the benefits of having a local college or university participate in the University Center Program. New Centers brought into the program would be expected to serve those areas with the greatest needs. Thus, this graduation policy should provide more benefits to, rather than shortchange, the Nation's economically distressed areas.

Second, the statements imply that all University Centers will cease to exist once the EDA funding is reduced and eventually terminated. If that is true, then these Centers have failed to prove the value of their services to their states and local areas. Successful programs attract attention and a desire by the state and local governments and the sponsoring institutions themselves to support them with their own funds if necessary. In fact, many Centers have attracted other sources of support and will continue despite the gradual phaseout of EDA funding. In the absence of such evidence that a Center's services are highly valued at state and local levels, continued funding by the Federal Government seems particularly inappropriate.

5. "EDA has not used the full $5,000,000 mandated by Congress for support of University Centers. A large portion has been diverted to

projects that can only be remotely connected to the University Center Program, but which are not used to support University Centers."

The FY 1986 University Center Program budget was $4,785,000 (not $5,000,000) as a result of the reductions imposed under the Gramm-Rudman-Hollings budget amendment. EDA expenditures under the University Center Program amounted to $4,780,781. This included basic grants to ongoing Centers, long-term supplemental grants to ongoing Centers, short-term supplemental grants to ongoing Centers to provide specific local technical assistance, basic grants to new Centers, and a second-year grant to the American Association of State Colleges and Universities designed to increase the involvement of colleges and universities in the economic development of distressed areas. (The latter grant made extensive use of the knowledge and capabilities of staff at EDA-funded Centers.)

All of these grants clearly involve bringing the resources of institutions of higher education into the economic development process. The allegation that these grants are only remotely related to the University Center Program is not only unfair, but displays a lack of understanding of the University Center Program as well.

In closing, let me say that our University Center Program policies are not, as implied by Ms. Martillaro's testimony, aimed at dismantling the program. They are intended to improve the program and expand its benefits to other distressed areas. I would be happy to discuss this matter with you and other members of the Subcommittee at your convenience.

Sincerely,

Orson G. Swindle, III
Assistant Secretary
for Economic Development

Enclosure

INTERNATIONAL TRADE ADMINISTRATION

STATEMENT OF HAROLD W. WILLIAMS, PRESIDENT, INDUSTRIAL POLICY COUNCIL

Senator HOLLINGS. Mr.Williams, you may proceed.

Mr. WILLIAMS. Mr. Chairman, I am the president of the Industrial Policy Council, and we are devoted to promoting a competitiveness of U.S. industry. We are particularly interested in the trade adjustment assistance program for firms and industries.

We are asking the committee, notwithstanding the fact that the administration has seen fit to avoid requesting funds for trade adjustment assistance for firms, to appropriate $13.873 million for trade adjustment assistance centers, $2 million for industry technical assistance, and $2 million for administration of this program.

This would be exclusive of funds that the committee might wish to designate for the Tailored Clothing and Technology Corp., and for textile support for textile export development, which we support.

We are also asking that the committee direct the Department of Commerce to extend the cooperative agreements for the trade adjustment assistance centers, at least to the end of the fiscal year, and to obligate funds that are appropriated promptly within enactment of the appropriation bill, at least within 30 days, and to grant or renew the agreements for all the TAAC's that are performing satisfactorily.

I am an old bureaucrat, and I hate to ask Congress to direct a bureaucrat to do anything, because I feel we should be allowed to administer the law and not have Congress tell us how to do it in detail.

But I must say, sir, that the administration of the trade adjustment assistance firms has been so lacking in diligence that the only way Congress can see to it that the funds it has authorized and appropriated are expended properly is to direct the administration to do it.

That was my opinion, and I find that in a draft report, the Office of Technology Assessment has just prepared, they have underscored that opinion. They point out that as of April 1987, only $2.4 million of the $13.9 million Congress provided for TA had been obligated. Money carried over from previous years is diverted to other uses. The TAAC's had been given only brief 1- to 2-month extensions and were able to do little more than keep their doors open.

If the Office of Technology Assessment, and if TA for firms is to be preserved, it will need strong, explicit congressional direction for timely spending of appropriated funds. I couldn't have said it better myself, and I would request that Congress do so. Thank you very much.

[The prepared statement of Harold W. William follows:]

STATEMENT
HAROLD W. WILLIAMS
PRESIDENT
INDUSTRIAL POLICY COUNCIL

Mr. Chairman, I am the president of the Industrial Policy Council, an organization devoted to promoting the competitiveness of U. S. industry. We have a specific interest in trade adjustment assistance for firms and industries as a useful tool in helping businesses that have been harmed by imports to deal more successfully with their overseas competitors. Trade adjustment assistance is not only a humane and reasonable way to help those who have been harmed by imports, but it is the best way to hold back the tide of protectionism. It is better to help a business become more efficient than to preserve its inefficiency by imposing restrictions on its foreign competition.

I am here today to ask the subcommittee to provide continued funds in fiscal 1988 for the operation of the trade adjustment assistance centers and for the preservation of a modest program of technical assistance to industries that need to develop adjustment programs. We are asking for an appropriation of $13,875,000 to be earmarked for the continued operation of the trade adjustment assistance centers (TAAC's) within the overall appropriation for the International Trade Administration within the Department of Commerce. For reasons which I will explain below, we are asking that the Congress direct the Administration to make funds available for the continued operation of the trade adjustment assistance centers, the so-called "TAAC's" within 30 days after the enactment of the appropriation bill.

We also ask that the Congress direct the Administration to fund each of the trade adjustment assistance centers that has been in operation over the past three years, at levels comparable to those of previous years, unless there is a clear case of the center's failing to perform in accordance with its agreement and for reasons under its control.

We also ask that Congress direct the Secretary of Commerce to extend its cooperative agreements with the TAAC's at least to the end of fiscal year 1988, and that none be diverted to other programs. Such a direction is necessary because the Department of Commerce has, over the past two years provided the TAAC's with authority to operate only a few months at a time, and it has been extraordinarily difficult for them to recruit competent staff and to make longer term commitments to the businesses they are supposed to help.

In addition to the $13.875 million for the TAAC's, we are recommending an additional $2 million for technical assistance to industries, as well as $2 million for administration. Since the loan and loan guarantee program is no longer authorized, no funds are required for such purposes.

You may recall, Mr. Chairman, that I have been a witness before this subcommittee in previous years, both as a former Deputy Assistant Secretary for Trade Adjustment Assistance, as well as in my present capacity with the Industrial Policy Council. I have a long and intimate acquaintance with this program. The first trade adjustment assistance centers, the TAAC's, were established in 1978, with funds approved by this subcommittee, when I was Deputy Assistant Secretary for Economic Development and the responsibility for trade adjustment assistance for firms was placed in the Economic Development Administration.

Since that time the TAAC's have proved themselves to be effective providers of much-needed assistance to small and medium-sized businesses that have found themselves in trouble due to imports. This committee has received considerable testimony to that effect, and there is no need for me to go into that again. The record of your hearings in previous years is available for documentation of the success of the TAAC's.

I should remind you that the TAAC's are not government agencies. They are independent non-profit organizations, some free-standing, others affiliated with universities or other non-profit institutions. They are supported in large part by grants from the Department of Commerce authorized by the Trade Act, and appropriated annually by the Congress. Although the TAAC's take their general policy direction from the Office of Trade Adjustment Assistance within the International Trade Administration of the Department of Commerce, they are independent bodies. As such, they can often operate with less of the red tape that a government office would be obliged to create, and they can therefore provide help more quickly and more effectively. At least that was the theory which led to their establishment, and at least until recently it was true in practice.

It certainly was not true during the past year. It would have been nice if we could have brought before you this year additional examples of successful work by the TAAC's. But their operations this year have not been successful, largely due to the tactics adopted by the Department of Commerce that have withheld funds from the TAAC's, delayed renewal of their agreements, and severely disrupted their operations.

Businesses that legitimately were eligible for assistance under legislation passed by the Congress and approved by the Chief Executive have not received the help to which they were entitled.

The Administration is opposed to the trade adjustment assistance program. It has expressed its opposition before the Congress, but the Congress has seen fit to continue the program. Officials in the Department of Commerce are supposed to uphold the laws of the United States. Instead of administering the law authorizing and providing funds for trade adjustment assistance to firms they have adopted tactics to make it unworkable. By disrupting the TAAC program, they have undermined the law of the land.

As an old bureaucrat myself, I do not lightly recommend that the Congress involve itself in the day-to-day operations of the Executive Branch. But when the Executive Branch is failing to carry out a law passed by the Legislative Branch, the Congress has no choice but to specify exactly what the Department of Commerce must do to get this program back on track.

That is why we are asking this subcommittee not only to appropriate the required funds for the trade adjustment assistance program, but also to do the following:

(1) direct the Secretary of Commerce to extend the cooperative agreements with the existing TAAC's for at least until the end of fiscal year 1988;

(2) obligate the funds provided in the Appropriations Act to the TAAC's within 30 days of enactment, so that staff can be rehired, operations resumed and trade-impacted businesses assured that help will be available to them.

(3) renew agreements with all of the TAAC's that have operated in fiscal years 1985, 1986, and 1987 unless they have failed to perform in accordance with their agreements for reasons under their control.

We fear that the action of the Congress permitting the reprogramming of trade adjustment assistance funds that were not obligated in fiscal year 1986 may signal those in the Department of Commerce who want to kill trade adjustment assistance that they have everything to gain and nothing to lose by continually dragging their feet and holding back funds for the TAAC's. When I was in the Department, there were many officials in the International Trade Administration who looked hungrily at the TAAC funds as a way of getting more for their pet projects. Since then hostility toward the program has grown. I fear that even now there are those in the International Trade Administration who see the opportunity of squirreling away funds for next year by holding back on the fiscal year 1987 appropriation for trade adjustment assistance and then returning to Congress for a reprogramming next year. That is why we implore you to insert strong language in this year's appropriation bill that will send a message to the Department that you expect the TAAC's to be funded in full and without further foot-dragging.

Mr. Chairman, when American businesses have been hit harder that ever before by imports, it is no time to cut off a long-standing program designed to help impacted businesses. When "competitiveness" has become a watchword for what is needed by the American economy, it is no time to abandon a program which in the past has helped to make American businesses more competitive, and which can do so again in the future if Congress will compel the Department of Commerce to carry out its laws.

The Congress has given every intention of passing important trade legislation to deal with the huge trade deficit. Trade adjustment assistance is an important component of trade legislation. Trade adjustment assistance for firms is already authorized. What is needed is an appropriation for the coming fiscal year and a commitment on the part of the Administration to perform the function of the Executive Branch and implement the law. Given the actions of the Department of Commerce during the past several years, we must rely on the Congress not only to appropriate the funds, but also to provide a clear and unequivocal direction to the Administration to get on with carrying out the law.

Senator HOLLINGS. Thank you, all three of you for being here this morning. We appreciate your appearance.

Our second panel this morning will give their comments on telecommunications and the National Bureau of Standards.

We are pleased to hear from Mr. Henry Cauthen from Columbia, SC, followed by Dr. Russell C. Drew and then Mr. Richard Gowen.

TELECOMMUNICATIONS

STATEMENT OF HENRY CAUTHEN, PRESIDENT AND GENERAL MANAGER, SOUTH CAROLINA ETV COMMISSION

ACCOMPANIED BY PETER FANNON, PRESIDENT, NATIONAL ASSOCIATION OF PUBLIC TELEVISION STATIONS

Senator HOLLINGS. Very good.

Mr. CAUTHEN. Thank you, Mr. Chairman. I have written testimony that we would like to enter for the record, if you don't mind. I would like to talk about what is happening in South Carolina, if you don't mind.

Senator HOLLINGS. That is what I like to hear.

Mr. CAUTHEN. First of all, though, I would like to thank you and the other members of the committee for the support you have given to the facility program. PTFP has been tremendously important to us; also for the support you gave to the must-carry rule, because we found out very quickly in South Carolina what could happen when, through capricious action, cable companies could deny programming to the public in South Carolina, educational broadcasting programming.

I don't think any group should have that sort of power. They are very close to the point where they can control television to 50 percent of what the American public is able to see. I think Congress really has to look very closely at that. That kind of power turned lose without some sort of supervision is very dangerous. I hope you will continue to keep a close eye on that question.

Senator HOLLINGS. We will do so.

Mr. CAUTHEN. The facilities program I am here to discuss today has been of central importance to the South Carolina Educational Television System, the one that you had the vision to create in 1960, I should add at this point. I hope we have made you proud of what you created during the intervening years. Right now, we have 11 television stations and 7 FM radio stations that public broadcasting goes through, both television and radio, and we have a radio network for the blind statewide, which offers 18 hours of programming every day, and a 24-hour——

Senator HOLLINGS. Hold there a minute, please. Excuse me.

[Short recess.]

Senator HOLLINGS. Go right ahead, sir.

Mr. CAUTHEN. OK. Thank you.

As I was just summarizing the tremendous facilities that the facilities program has helped us develop in South Carolina, both in radio and television, both for the full channel FIDS system to serve authorized public schools and facilities throughout the State, and it provides what we think is invaluable service not only to the public schools, but to the citizens of all ages and all walks of life in South Carolina.

I think it is fair to say that the facilities program has proven to be really an essential part of making all this happen. If it hadn't been for the facilities program, it simply wouldn't have happened, in many cases.

Senator HOLLINGS. How much participation in South Carolina is there in this?

Mr. CAUTHEN. Twenty-four grants worth $4.1 million, and that leveraged $38 million worth of State spending to develop our system.

Senator HOLLINGS. Over what period of time is that?

Mr. CAUTHEN. The first grant we got was about 1965, I think. My memory might not be exact.

Senator HOLLINGS. Over 20 years?

Mr. CAUTHEN. That is right. I am not sure when the facilities program started, but we were early on in the facilities program in getting some of the moneys to help South Carolina.

The important thing for us to deal with right now, though, is that if we have got $9 million worth of equipment that is obsolete, and we are not able to find some way to replace that, then our system is in real danger. The Federal money is seed money that helps us leverage State dollars to replace this system.

I think this is a typical situation throughout the country; other States are facing the same kinds of problems. They don't have the seed money from the Federal Government to do the facilities program, and a lot of systems are going to go down.

Senator HOLLINGS. All right. Two-thirds, you say, are associated with State governments and universities?

Mr. CAUTHEN. That is correct.

Senator HOLLINGS. Local school boards and everything else, can't carry forward with their funds unless they get this kind of seed money. It is not going to go, as I understand it. What is the request this year?

Mr. KANE. Zero.

Senator HOLLINGS. Zero, instead of, what $32 million?

Mr. CAUTHEN. $32 million is our request, Senator. I don't know if we will get it.

Senator HOLLINGS. But they put in zero dollars? Good enough. We will get this in, and we appreciate your testimony.

Mr. CAUTHEN. One point I would like to make is that our request this year, I think, is a quarter of a million to support our programming for the blind, which is a statewide program of special closed circuit radio that we feed to the blind. It is a very important program. Without the Federal money, it wouldn't happen, either. We put the NOAA Weather Service on our towers throughout the State. We have statewide weather service.

Senator HOLLINGS. We have got all that, the blind and the NOAA program and everything else.

Mr. CAUTHEN. If you could have given me 10 more minutes, I would give you some things. I appreciate the chance; it is important to us.

Senator HOLLINGS. Yes, we thank you and Mr. Fannon and your statements will be printed in full in the record.

[The prepared statement of Henry Cauthen follows:]

Testimony of

Henry J. Cauthen, President
South Carolina Educational Television and Radio Network

Mr. Chairman, I want to thank you and others on this committee for the support you have given in the past to the PTFP (Public Telecommunications Facilities Program).

Also, I want to thank you for your support of the "must-carry" cable regulations. We saw just a few months ago what damage they could do in my own State of South Carolina by their capricious and insensitive treatment of our educational television services to the people of our state. They are rapidly moving into a position where they can, for all practical purposes, control what television is available to a majority of the American people. I do not think any group should have such power and control over such a critical resource as television without careful supervision of Congress or others who have the public interest in mind rather than a group that is driven by selfish profit motives.

Mr. Chairman, the Facilities Program I am here to discuss today has been of central importance to the South Carolina Educational Television System that you had the vision as governor to create. SCETV, with the assistance of the PTFP, now operates 11 television stations, 7 FM radio stations, a radio network for the blind, and a statewide ITFS system that provides 4 channels of closed circuit television to serve public schools, colleges, hospitals, technical education centers, state agencies, day care centers and many other locations.

It is fair to say that SCETV is one of the most efficient educational communications systems in the world. It provides invaluable services to citizens of all ages throughout the state. I think it is fair to say that the Facilities Program has proven to be an essential element in this development.

Over the years we have received 24 grants totaling $4.1 million. This has proven to be the catalyst in the acquisition of more than $38 million in equipment to provide services to the people of South Carolina. That's an 8 to 1 ratio -- a pretty good payoff by any measure.

The real payoff, however, has been in service to people. Every year we serve:

- o Nearly 500,000 school children (95% of those who have TV available to them);
- o 20,000 teachers use TV in the classroom for in-service education;
- o 11,000 medical personnel receive 70 hours of training each month;
- o 5,200 law enforcement officers receive monthly training;
- o 12,000 children in day care centers have their experience enriched through ETV.

In one of the most dramatic uses of ETV, the University of South Carolina now grants more master's degrees in Business Administration to students off campus through ETV than to those in conventional classrooms. Some 70% of one strand of the engineering graduate degree program students receive their classes through television. And this trend is continuing.

We offer 18 hours per day of special radio programs for the blind. In fact, our request to the PTFP this year is for equipment funds to continue and expand this very important service.

We also offer a statewide 24-hour weather service in cooperation with NOAA (National Oceanic and Atmospheric Administration).

And, of course, in the more than 110 hours of programs we offer each day through our system of broadcast and closed circuit television and radio, we provide a full public broadcasting service. In fact, SCETV is one of the major producers for PBS -- co-producing such series as American Playhouse, Wonderworks, and Great Performances. And we brought William F. Buckley's Firing Line to Public Broadcasting.

Mr. Chairman, the bottom line is that what you and the others on this committee have done through the Facilities Program has helped make very valuable services available to people throughout our state. Without the PTFP, much of this service would never have materialized. Your seed money has born fruit beyond what I am sure many have ever imagined. I know of no, I repeat, no program that has touched so many people in so many positive ways than your modest but important investments in this program. It was critical to the beginning of educational broadcasting and continues to be critical to its continued successful operations of educational and public broadcasting. For instance, in South Carolina more than $9 million of our $38 million in equipment is now obsolete or worn out and in need of replacement, and I think this is typical of most states.

I urge you to give this program its full authorized funding of $32 million. I know of few, if any, programs that will give you more return for your investment.

Testimony
of
Peter Fannon, President
National Association of Public Television Stations
and
Henry Cauthen, President & General Manager
South Carolina ETV Commission

Introduction

The National Association of Public Television Stations is pleased to provide testimony in support of a fully funded Public Telecommunications Facilities Program (PTFP), the matching grant program administered by the National Telecommunications and Information Administration (NTIA) within the Department of Commerce.

Our members, the nearly 300 public television stations throughout the country, are grateful for the support of this Subcommittee, both for recognizing the need for this vital program for public television and for appropriating reasonable levels of support to meet that need. Each year's appropriation has provided the leverage that has allowed public television programming to reach families throughout the country.

We also wish to thank members of this Subcommittee for their support in attempting to preserve the federal government's investment in public television facilities by urging continued required carriage of public television on local cable systems. As the recent action at the FCC on cable "must carry" proceeded over the last year, the voice of the Congress, and particularly members of this Subcommittee, was responsible for bringing to the Commissioners' attention the plight of some 200 dropped and shifted public television stations around the country.

Summary of Request

We urge this Subcommittee to continue its strong support for the PTFP program. We recommend that you deny the Administration's request to rescind all but the administrative costs of operating the program in the current fiscal year, leaving the program with $1.2 million to phase itself out. We ask instead that the Committee recommend an appropriation of $32 million for fiscal year 1988, the full amount authorized in provisions of Public Law 99-272, the Omnibus Budget Reconciliation Act of 1986.

In this current fiscal year, public television stations have submitted 337 applications for matching funds from the total appropriation of $20.5 million. While this demonstrates the great need for this program, this FY1987 appropriation level was less than both the authorized level for the program of $24 million and the previous year's appropriation of $22.9 million. We ask this subcommittee to oppose further cuts in PTFP's FY1987 appropriation by denying the Administration's pending rescission request. This request, like those that have preceded it, would leave the program with only enough funds to close it down.

For FY1988, the nation's public television stations seek the full amount authorized for PTFP, a total $32 million. Given the great need to replace obsolete equipment at our public stations across the country, and to continue to build new stations to extend the availability of our programs to even more Americans, we believe this is a reasonable request.

Need for Modest Federal Support Continues

The PTFP program has made possible the growth and development of a viable nationwide public television service that is available to nearly all of us. To put that value in more important, human terms, over 97% of the nation's homes and classrooms can now receive a free public television signal. Construction of the public televisionn system began in 1953, and by 1962 only a quarter of the nation's homes could make the same claim. Since the program's inception in 1962, the federal investment of just $325.9 million has spurred contributions from individuals, businesses, and state and local governments to build a system whose total replacement value is now over $1.5 billion, excluding buildings and land. In terms of looking at PTFP as leverage money, that's one federal dollar for every five local dollars, not including the on-going local operations dollars, which would add even more to the federal leverage.

But building these stations does not end our challenge of getting and keeping public television on the air. Since many of our stations were built and went on the air at the same time, we can expect major transmission equipment replacement needs to rise steadily for the next several years, peaking in the mid-1990's. Without the vital linchpin of federal support provided by PTFP, vital equipment needs cannot be met and new stations could not be built.

Nearly two-thirds of all public television stations are licensed to universities, local school boards, and state governments. In most instances, these stations are prohibited by state law from carrying funds forward from a given year for equipment needs in the future; in other words, many cannot develop a fund to amortize equipment replacement costs over the years as commercial stations do. All too often, they must wait for actual breakdown of the equipment to secure state or institutional support and then seek the federal match to realize the full investment needs.

In the case of stations licensed to community organizations --including many of our major program production centers--significant cash demands for capital equipment in local busgets can be prohibitive, especially when a stations is just beginning or seeks to upgrade to reach new areas or improve its technical quality.

The transmission of a television signal requires much more than the flip of a switch; it involves the smooth co-operation of an immeasurable number of intricate mechanical parts. These parts can break, become outdated, or just plain wear out even with the most painstaking attention to their care and operation. Far too many public television stations are using equipment that has gone far past its useful life. Capital replacement in public television does not begin to keep up with real need--it is not even close to professional engineering recommendations. Most commercial television stations would not, and do not, operate with equipment as old and outdated as that used by many public television stations.

Our studies show that it will cost an estimated $155 million per year merely to sustain the present system with updated equipment. In addition, it will cost over $20 million per year to extend a first service to those in America who cannot now receive a public television signal of any kind. The total capital needed for fiscal 1988 in current dollars is $175 million, based on NAPTS' surveys and analyses. (See charts attached.)

This year (FY1987), the list of grant applications for PTFP totals 337 requests. These applications are all backed by local dollars and also don't include a single cent toward standard operating costs, buildings, or land. Last year, 328 applications were accepted for filing, with a total request of $91.3 million for projects totaling $127 million. With only $20.5 million in total available in grant funds this year, over 75% of this year's applications will not be funded, leaving those unsuccessful applicants with failing equipment for at least another year.

Once a station identifies its most urgent need for equipment replacement and raises a local match, it may take years of applying and re-applying for PFTP funds before they are awarded. For example, because of the small amount of funds available, WKAR/East Lansing, Michigan had to apply for four years for funds to help purchase a switcher and two tape machines before they were awarded in FY1986. Part of their original request remains unfunded, and because of the delay, the cameras they wished to purchase four years ago are now themselves becoming outdated.

Based on the fact that over 95% of the nation's homes currently receive a public television signal, some have concluded that the PTFP program is no longer necessary. Obviously, just the opposite is true. In this past year, the National Telecommunications and Information Administration (NTIA) proposed and then withdrew new revised regulations for administration of the PTFP program. These revisions were designed to implement policies at NTIA which would "encourage noncommercial telecommmunications entities specifically to reduce their reliance on federal PTFP funding in future years." This goal was in direct conflict with that stated by the Congress in authorizing and maintaining PTFP. Fortunately, because of the comments heard in opposition to the revised rules from the Congress and elsewhere, these were withdrawn after the official comment period expired.

The nation's public television stations need your support to insure that the PTFP program will continue to provide the important matching dollars that have built our current public stations and will help maintain it into the future. We need to complete the system, but moreover, we need to preserve the past years' investment and keep our current system operating. We must recognize that in the not-for-profit world these extraordinary costs cannot be met in every community by local resources alone.

First Service Expansion Remains a Priority

The nation's citizens who support public broadcasting through their taxes but still cannot receive a clear public television signal should remain the PTFP program's highest priority.

There are still sizeable areas of the country which cannot receive an acceptable public television signal or any service at all. In the last few years, public television has reached into many of the previously unserved areas in the West--particularly Wyoming, Montana, and Nevada--there are still pockets of unserved or underserved households across the country.

Many of our stations are hoping to expand their current signal coverage into unserved pockets, but lack of money for the needed equipment needs has hampered expansion.

In Arkansas, for example, the state-licensed Arkansas Educational Television Commission does not reach some of the western part of the state, as well as its southeast corner. The addition of a signal translator would extend the Network's service to the southeastern area of the state. Likewise, new equipment could provide vital educational service to the western portion of the state.

Age, Overuse, and Maintenance Costs Handicap Efficiency

In order merely to deliver a signal to the public, a television station relies on basic equipment--a satellite dish antenna to receive programming, and a transmitter, tower, antenna and related equipment to transmit it. A transmitter's useful life is only 15 years; over 50 of our stations' are over 20 years old, almost 200 are over 15 years old, and over 200 are over 10. As previously mentioned, the need to replace these aging vital broadcast parts should peak by the mid-1990's.

The state-licensed Kentucky Educational Television Network has 15 transmitters -- the largest number of broadcast television transmitters licensed to any entity, commercial or public, in the nation. Thirteen of the transmitter towers were erected in 1968, and at least five of those are located in areas with an extraordinarily high level of corrosives in the air. The towers, antennae, and guide wires in these areas have already begun to show signs of accelerated deterioration. Within the next few years, KET will be forced to begin systematic replacement of its towers and equipment in order to meet FCC regulations.

Another state network in need of transmission replacement funds is the New Jersey Public Broadcasting Authority, the licensee of four non-commercial, educational stations. The New Jersey Network produces the only statewide non-commercial news in the country, and provides hundreds of hours of Hispanic, educational, and informational programming to other stations across the country.

The Network's program transmission and distribution system of links and microwave interconnections has not been upgraded or replaced since it was installed in 1971. Replacement parts for the current system are no longer manufactured. There have been long outages of this vital equipment which is no longer suitable for FCC licensing. New Jersey's pending application at PTFP for $282,579, if approved, would help the system replace this equipment.

Many of our stations came on the air with secondhand equipment from commercial stations; others continue to operate with aging original equipment for which replacement parts are no longer available.

WKNO/Memphis, Tennessee, last year received $240,852 from

PTFP to help replace and improve its 22 year old transmitter. The total estimated cost of replacing this equipment was $1,098,124. The PTFP grant will help raise significant amounts of local money needed to complete this project.

For the stations within our system who produce large amounts of programs for the national program schedule, studio equipment needs are vital not only to their own viewers, but to public television's national audience.

In 1986, having last applied for a PTFP grant eight years previously, WGBH/Boston applied for a grant of $752,775 (total project cost $1,003,700) to replace their obsolete routing and switching system. They wished to replace the twenty year old principal routing system and four small routing systems, which could not be interconnected. They received a grant of $20,000 from PTFP in 1986 for this purpose. They did not resubmit the remainder of the request, because the need was so urgent that they had to take money from other resources.

WGBH has begun work on a master plan for the development of its technical facilities over the next two decades. Some of the equipment they will be replacing was installed in 1964. Since they are a major supplier of programs for the national program schedule, it is crucial to the whole system that they have high-quality, dependable equipment.

Another point worth mentioning in support of the PTFP program is that nearly two-thirds of our public television stations operate in the UHF band--Channels 14-69. Not only is reception of a quality signal difficult for half of the country's homes from UHF stations, but it is an extremely expensive signal to operate. The FCC has reported that it costs nearly four times as much to operate equivalent signals on UHF as on VHF.

Although recent technological advances in UHF equipment design have made a big difference, most UHF stations cannot afford to buy the five million watt transmitter required to provide a quality UHF signal, nor could they ever afford the power bill! If initial investments from PTFP can be secured, "snow" and haze can be cleared, and energy and equipment costs can be lowered.

Conclusion

Public television stations are best known for bringing programs like Sesame Street, National Geographic Specials, the MacNeil/Lehrer Newshour, and Great Performances into America's homes and classrooms. The hardware necessary to produce distribute and transmit these and all of public television's programs is the crucial part of television that brings scholar to eager classroom, performer to grateful audience, and newscaster to informed viewer.

The challenge of the federal government to provide the seed money to bring this quality public television to unserved or underserved areas of the country and the people who live there remains unmet. And many stations delivering programming have equipment that is living on borrowed time.

Since 1962, public television stations across the country have proven time and again their success at matching the federal government's commitment of funds for their equipment needs with local dollars. Their purchases of equipment have come after years of costly maintenance, embarassing outages, and years of planning.

Within the non-profit world, capital formation is extremely difficult and television equipment costs are more than substantial. The challenge of the PTFP's matching grants is very productive, and the program is extremely well-administered.

We believe that the $32 million authorized by the Congress this year for the PTFP program is strongly needed.

NAPTS
3/25/87

SUMMARY OF PROJECTIONS
REPLACEMENT COSTS & COSTS OF NEW FACILITIES
PUBLIC TELEVISION FIELD SYSTEM
1987 - 1995
(IN THOUSANDS)

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	FY95
IN CURRENT DOLLARS:									
REPLACEMENT COSTS:									
EXISTING SYSTEM @12/31/86	151,031	151,031	151,031	151,031	151,031	151,031	151,031	151,031	151,031
PROJECTED FOR FY87 - FY95	1,408	3,699	5,130	6,380	7,436	8,446	9,302	9,763	8,975
SUB-TOTAL REPLACEMENT COSTS	152,439	154,730	156,161	157,411	158,467	159,477	160,333	160,794	160,006
PLUS ORIGINAL COST OF NEW FACILITIES PROJECTED FOR FY87 - FY95	15,263	20,834	14,300	11,744	4,990	9,534	7,224	7,164	4,914
TOTAL FACILITIES NEEDS IN CURRENT DOLLARS	167,702	175,564	170,461	169,155	163,457	169,011	167,557	167,958	164,920
IN CONSTANT DOLLARS:									
REPLACEMENT COSTS:									
EXISTING SYSTEM @ 12/31/86	171,435	178,292	185,421	192,836	200,554	208,574	216,926	225,595	234,627
PROJECTED FOR FY87 - FY95	1,598	4,367	6,298	8,146	9,874	11,664	13,360	14,583	13,943
SUB-TOTAL REPLACEMENT COSTS	173,034	182,659	191,719	200,982	210,428	220,238	230,286	240,178	248,569
PLUS ORIGINAL COST OF NEW FACILITIES PROJECTED FOR FY87 - FY95	17,325	24,595	17,556	14,995	6,626	13,166	10,376	10,701	7,634
TOTAL FACILITIES NEEDS IN CONSTANT DOLLARS	190,359	207,253	209,275	215,977	217,055	233,404	240,662	250,879	256,203

Sources: Economic factors - U.S. Department of Labor (BLS/CPI)
System valuation - PBS Engineering Committee,
1983 equipment prices indexed forward

NATIONAL BUREAU OF STANDARDS

STATEMENT OF DR. RUSSELL C. DREW, PRESIDENT-ELECT, INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Senator HOLLINGS. Mr. Drew?

Mr. DREW. Yes, Senator Hollings. I am here on behalf of the IEEE, The Institute of Electrical and Electronics Engineers. We are the world's largest technical professional society. We are approaching a quarter of a million members in the United States alone.

I am here to bring you a message about an urgent need and to ask you to provide additional funds for the National Bureau of Standards. I realize that this is a difficult year to face that sort of request, but I want to try to emphasize and impress upon you the sense of urgency that we feel is attached to, particularly the standards-setting programs in the National Bureau of Standards.

The Bureau is an honored institution; has done a tremendous job over the years, but for over the last 10 years, it has been essentially level funded. What that has meant, as new programs have been levied on to the Bureau, is that they have lost much of the vitality of their basic standards mission and the people that are necessary to advance that standards mission have been retiring, leaving the Bureau, and we haven't been replacing them.

So as a consequence, we now face a very serious crisis in the basic mission of the Bureau's standards-setting and standards-supporting mission. It is that part that I would like to emphasize.

We believe that approximately $25 million in additional funding is necessary, particularly in critical areas of advanced technology, lightwave technology; the development of standards in the utilization of fiberoptics, which are going to be much, much more prevalent in society; in microwave technology, extending the range of our transmissions into higher frequencies.

These are areas where we have done a very careful review and have determined that the Bureau of Standards programs are very seriously deficient, and they are hampering competitiveness of U.S. industry. That is, I think, what the bottom line is all about here.

In addition, I would like to emphasize the Institute for Computer Science and Technology. This, too, is a standard-setting and standard-supporting part of the Bureau which supports an extremely important part of the high technology industry in the United States today.

You have heard a lot, and you have probably read a lot about the semiconductor industry and its problems, but the bottom line of semiconductors is the area where the semiconductors are used, and those are computers.

That is where the industrial competitiveness battle is being fought. The Bureau of Standards provides an important catalytic role with the Institute of Computer Science and Technology in this very vital area of computer standard setting. So we are asking for a restoration of $3 million to that program to bring them just to a constant level that they have been operating at for the last several years.

This is a vital program to the United States at this time, Senator. I would encourage your attention to it. Thank you very much for this opportunity.

Senator HOLLINGS. Thank you.

We have, as you know, the rapid acquisition of manufacturers' parts. That originated with the Bureau of Standards, and it is now being developed by the Navy in a research facility down in Charleston, SC.

Realizing that and the need for the commercialization of technology, we need, and I have a bill in, to revive the Bureau of the Institute of Technology. That has just been lost down there. It has got substantially more money to it. I am getting the support of the Congress, and I was just on the phone—that is why I was a little late here this morning—with the Secretary of Commerce, to get him up here on the 19th to testify.

They all say they are for it, but they won't be permitted to testify for any kind of money. Do you know what I mean?

Mr. DREW. Senator, just last week we testified over on the House on a somewhat similar measure Congressman George Brown, Jr. put in. Frankly, I think the time is becoming right for new institutional arrangements because of the very seriously organized and government-supported industrial competition we face. I think it is timely that we very strongly support measures such as yours.

Senator HOLLINGS. Thank you, sir.

[The prepared statement of Dr. Russell C. Drew follows:]

IEEE WASHINGTON OFFICE
THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC.

STATEMENT

BY

DR. RUSSELL C. DREW

On Behalf of the

ENGINEERING R&D COMMITTEE

on

NATIONAL REQUIREMENTS FOR COMPUTER STANDARDS AND PRODUCT MEASUREMENT STANDARDS AND THEIR RELATIONSHIP TO THE NATIONAL BUREAU OF STANDARDS

As the largest technical professional society in the world, the IEEE has a very special interest in the vigorous growth of technology and its productive application to serve people's needs both here and abroad. Our 228,000 members in the United States are engaged in advancing the frontiers of knowledge across a broad range of important and fast growing technologies that are vital to our national industrial competitiveness and our defense systems. We are, therefore, particularly interested in Government programs that support those efforts.

In this regard, we wish to address the elements of the proposed Federal Budget that affect programs of the National Bureau of Standards in computer science and technology, such as specifications and conformance standards, and on product measurement science, such as precision measurement standards for electrical, electronic, microwave, millimeter wave, fiber optic and optical electronics.

The National Bureau of Standards has a legitimate role of government in supporting the Nation's science and technology base. It is the unbiased arbiter of numerous technology issues relating to metrology, the science of measurements. The NBS Organic Act of March 3, 1901, wisely recognized this central, basic role of NBS as the leader and technical support structure for weights and measures elements of our economy and commerce. As technology has advanced and become more complicated, the role has taken on even greater significance. It now provides a sound national system upon which physical quantity measurements are based that are vital to new product research, productivity, assurance of quality, maintenance of equity in trade and in a multitude of defense and space applications. We see it as the most important component of all the Department of Commerce efforts to advance, aid and support American industry.

Yet, despite the critical and elemental role of NBS to the vitality of America's industry and technology, it has historically been underfunded to execute its basic role and the additional tasks assigned to it over the years. It has been burdened with programs and assignments that have been important to the national interest and which the excellent scientific knowledge base of the Bureau has been competent to fulfill. Nonetheless, these added programs were not matched with needed funds. Typically NBS has been provided initializing funds for new projects far less than the projects needed, with intentions for future increases. These intentions were rarely carried out and NBS's basic metrology mission suffered funding depressions, as did other added tasks, in an effort to satisfy a succession of Administrations and Congresses.

All of this has left NBS in a weakened condition in terms of finances, manpower and technical vitality. We feel that the funding level of NBS should exceed $200 million per year. We are pleased to see an increment towards this goal in this year's budget. The history of NBS budget requests to the Department of Commerce has shown levels consistently in excess of $200 million. However, the requested amounts have not been passed on through DOC and the Office of Management and Budget. While this $200 million level is needed immediately, in recognition of the federal deficit posture we would recommend that the NBS budget be built up to at least $200 million over a period of three to five years. In parallel with this, we recommend the involvement of technical and industrial organizations with NBS to outline a plan to set priorities and actions to restore NBS as a fully adequate resource.

We were pleased to note that the 1987 Authorization Act included an alternative personnel management system for NBS scientific and engineering personnel modeled after a similar successful program at Navy Laboratories at San Diego and China Lake, California. This was an outgrowth of the efforts of the Honorable Don Fuqua, former Chairman of the House Committee on Science and Technology to implement concerns expressed by Hon David Packard reflecting the views of the White House Science Council's Federal Laboratory Review Panel. It allows the Director of NBS to pay more competitive salaries to attract, motivate and retain NBS's most essential element, its scientists and engineers, and to improve the overall ability of the Bureau to manage and perform scientific and technical work. However, even with this enlightened tool at hand, it is understood that the government will continue to skimp unwisely on this valuable program by not providing increased funding to pay for it. So history will repeat itself. A New program without new funds; new funds taken out of current programs; overall effectiveness reduced; a gain turned into a loss. Those who impose such restrictions are short sighted and obstructive of the program's objectives. Additional funds should be added to the NBS budget immediately to allow an orderly and reasonable implementation of the plan without still further detriment to existing programs. This is particularly important since we expect the NBS demonstration program to show the way to better management of one of the government's key resources, its scientists and engineers.

COMPUTER SCIENCE AND TECHNOLOGY PROGRAMS

The United States has long been recognized as the World leaders in computer technology. Yet, today, our computer industry is in serious trouble. As recently as last year, this industry provided a healthy positive counterbalance to our international trade deficit. However, we are now fast approaching a negative balance which portends a hastening of decline of even this last bastion of US technological dominance. we feel strongly that there is a legitimate, necessary government role in supporting the competitiveness of this industry.

One of the key government functions that provides an underlying basis for our technological society and production mechanisms is support for the development and implementation of industrial standards of conformity. These are written technical standards and specifications prepared to assure the form, fit and functional compatibility of equipment and systems developed and built for US and international markets. These include standards developed and established by the Government for its own use in defining and acquiring products and services. It also involves those national and international industrial standards development activities which the Federal Government supports through widespread participation in voluntary standards efforts.

The IEEE is a major partner in many of these efforts. As a result, we in the IEEE are very strong supporters of a healthy standards program within the NBS as an important and unique contribution to our nation's industrial competitiveness. The NBS plays a major role in these nationwide activities. In the case of computer standards and specification, the critical operating unit in NBS is the Institute for Computer Science and Technology (ICST). Its program supports the Department of Commerce goals of promoting the development and application of science and technology in US industries and increasing their competitiveness. It is especially meaningful and essential to the Department's goals in products and services growth and exports in telecommunications, computer and information products and related services. It aids the DOC in assuring the development and acceptance of US generated technical standards based on US technology and manufacturing methodology. It further improves the Federal Government's cost-effective use of computer and telecommunications technology, as the largest single user of the technology in the nation.

The IEEE strongly supported the DOC goals in this matter. They are consistent with the IEEE's concern for the technical and economic health and vitality of US industry and of its relative position in the world marketplace. In this connection, we are seriously concerned with the funding levels planned for the ICST in 1988. The Institute was funded at $10 million in 1985, $9.6 million in 1986 and $7.5 million in 1987. The 1986 level was inadequate; the 1987 was devastating. It is the IEEE's position that a failure to fund at adequate levels will lead to a major loss to US industry and seriously handicap its competitive posture in domestic and international markets. We strongly support a funding level equivalent to the 1985 level of $10 million, adjusted upward for inflation. This should be followed by real increases to bring the ICST to a funding level of at least $15 million in current dollars.

The Government spends over $15 billion annually on information technology.

Cost benefit studies by independent consultants have identified over $300 million in Federal cost savings for data-base software standards alone. Comparably large savings are anticipated through standards being completed in the areas of networking protocols, computer security, and computer based message systems. Computing technology is at the heart of efforts to improve productivity and cut costs in government, industry and business. Computer hardware, software and communication standards is one of the areas of greatest cost leverage. This is where the ICST provides crucial national leadership and coordination that maximizes compatibility and efficiency.

Funding of the ICST to increased levels is a sound investment. The ICST is a source of objective, independent input while representing the interests of the Federal Government as a larger user of information technology. Its staff serves a key role in over sixty voluntary industry standards committees, providing critical technical input concerning technical specifications, and in the measurement and testing of the draft standards. Their participation further assure the necessary continuity and impetus to the standards drafting process, a process which easily stalemates without the presence of independent, but highly motivated participants representing consumer viewpoints. For example, it is clear that the many suppliers of computer networking services need the unifying force of an unbiased, internationally recognized and respected third party if we are to avoid an uncontrolled, disruptive, and wasteful proliferation of incompatible computer hardware and software that would be chaotic to both users and vendors, but especially to users such as the Federal Government. This has been the role played by the ICST in developing and facilitating the adoption of key standards. It provides a fundamental underpinning for the computer industry which enhances productivity and market demand while leveraging innovation into new products. We are dismayed at the 1987 cuts in the ICST's networking program and place a high priority on restoration of these funds.

The Institute for Computer Science and Technology at NBS is a small and fragile resource in the much larger Department of Commerce structure. It has, however, a key role that far exceeds its size. In fact, its small size versus its impact is evidence of the economy of this highly effective program at a time when competitiveness and negative trade balances are of such major concern. The private sector is neither able nor willing to substitute for the unique role of the ICST. This position and the importance of the ICST has been underscored by the many distinguished witnesses that have given testimony before the Congress over the last several years. We join them in support of the ICST. We believe that funding of the ICST at increased levels will produce a highly leveraged return on investment. For example, we feel the ICST should have standards research underway in the area of reliability recovery and integrity of complex computer systems. Both government and the private sector rely increasingly on such systems. An expanded role for the ICST is of high national interest as a vital element to a healthy and vibrant information technology infrastructure in the United States and in competition in worldwide markets.

MEASUREMENT SCIENCE AND PRECISION MEASUREMENT STANDARDS

There has been a steady decline in the capability of the Federal Government to assure the veracity and authenticity of precision measurements used in the marketplace and in defense programs. U.S. industry needs precise state-of-the-art measurements and measuring systems to provide advances in technology, to perform research, and to design better, more competitive equipment. Precisely controlled measurements are at the heart of technological advancement and product competitiveness. The ability to do this gives a nation the edge in worldwide technology commerce. We are gravely concerned that work on more precise and accurate measurements in the USA is slipping badly, as is our relative world position in making and controlling extremely accurate measurements.

Early in this century our Government recognized its basic role to maintain and disseminate such measurement standards as to assure the equity of trade and of the marketplace. That is, in the conduct of commerce, they wanted industrialists to know that they were manufacturing and buyers to know what to expect to get for their money. That basic role is unchanged to this day and its need is far greater as increasingly precise and complex new technologies have appeared. This fundamental and basic role is contained in the Organic Act of 1901 with numerous recent amendments. It assigns mission and functions to the National Bureau of Standards (NBS) that encompass this role. IEEE supports the intent of the Organic Act that the fundamental function of NBS is the research, development and dissemination of adequately precise and accurate measurements, measurement standards, and measurement methods. This is its central role. They are considered the leaders and arbiters of the national measurement system as a legitimate function of centralized government. It is the view of the IEEE that all other NBS functions that compete and interfere with these activities, while important in and of themselves, are of less importance and of lower priority.

Economic estimates have shown that $160 billion per year are spent on measurements in the USA. These measurements are derived from an overall national resource that can best be described as a national measurement system. While the National Bureau of Standards are the leaders of the national measurement system, this leadership role has been subverted by numerous events and erosions that have seriously weakened the resources of NBS to conduct its fundamental business. Inadequate funding for these most basic functions is at the heart of the atrophy and neglect of NBS. Needed technological advances in measurement to parallel advances in science and engineering are not happening. The tools for the Nation's leading engineers and scientists are not there when needed.

The transfer of technology from research laboratories into manufacturing is vitally linked to precise, accurate, and adequate measurement capability. Manufacturing process and product quality are highly dependent upon precision measurements. All measurements in the USA must be linked to common measurement references to avoid chaos in the laboratory, factory and marketplace. It is the assigned role of the NBS to furnish those common measurement references; yet, NBS has not been furnished the financial support to do the job. All of science and industry suffers and our economy pays the price. Manufacturing of innovative products is seriously delayed if no adequate means exists to precisely and accurately measure the new technology that is discovered. Defense and space capabilities are needlessly limited and endangered by inability to more precisely measure and control systems.

When the NBS does not perform, US industry must turn to foreign makers of precision measurement equipment for our needs, or develop their own measurement methods and systems. In either event, we are faced with increasing foreign market dependence or the needless duplication and expenditure of scarce resources for advanced technology projects. If NBS could do its job, the foundation for measurement resources would be there, the foreign dependence could be avoided, and the wasted effort could be used to advance America's competitive position. Proper funding and priority placement is the key to NBS success in this most basic function. Necessary emphasis and requirements must be placed on the Department of Commerce and the NBS to assure this success and to maintain proper focus on measurement science and technology.

The lack of adequate resources in the DOC to meet the needs of the national measurement system particularly impacts the needs of the nation in electronics technology. This technology forms the largest manufacturing group in the U.S. with 2.3 million employees. The $215 billion electronics market represents about 5.5% of the gross national product and is growing. Export of electronics equipment is now about $40 billion. Exports exceeded imports by $5 billion five years ago, but it is now reversed. In 1985 electronic imports exceeded exports by $9 billion; the 1986 estimate is for a $12 billion imbalance with the trend toward even greater trade deficits in future years.

In some frequency bands such as those needed for new satellite communication systems, no adequate NBS measurement standards capabilities exist. Because of increasing concern for the future of measurement capability to support electronics technology, two groups have merged within the IEEE to examine the problem and explore immediate and long term actions to regain lost ground and to achieve the high ground, once again. These engineers come from component, instrument, and system manufacturers, whose frustrations and concerns have reached such levels that they believe alrams aneed to be sounded. Their studies to date reveal that the NBS's measurement science capability has fallen behind more seriously than originally imagined by the technical community. They conclude that, while private industry can contribute to electronics measurement technology, the NBS has the fundamental technical and leadership role with regard to the national measurement reference standards segment. They further realize that research into new measurement frontiers must take place at the national reference level in advance of, or, at least in parallel with advances in industry. Most desirably, the advances through NBS research would function in an iterative process with NBS and industry working together in teamwork. There is no way this can happen in the current weakened funding environment at NBS. Private funding to supplement NBS's current funding may sound attractive, but the two IEEE study groups and many others conclude that expectations of a simultaneous uprising or mutually compatible and motivated companies is highly unlikely, although ideally attractive as a substitute to increased government funding.

The need for measurement technology support for electronics covers the entire electromagnetic domain from direct current to optical systems. In the lightwave measurement technology area, which includes fiber optics, deficiencies are most pronounced at power levels of 1 to 200 milliwatts at wavelengths of 600 to 860 nanometers and from 1 to 8 milliwatts at 1300 to 1550 nanometers. Attenuation measurements and related primary standards are also deficient from 0.1 to 100db at accuracies at the test set usage level of 0.1db/10db. In the millimeter wave and microwave technology area, some 75 specific deficiencies in combinations of frequency versus measurement parameter were exposed by a recent IEEE study. The amount needed over the next five years to correct the most serious deficiencies has been estimated at $38 million. These include power, attenuation, impedance and thermal noise in the millimeter/microwave frequency spectrums above 18 GHz where the highest priority needs were identified. In the areas of general electronics measurement, known within NBS as product control and quality assurance, deficiencies exist in alternating current measurement standards for support to devices at accuracies of better than 5 parts per million from 40 KHz; more accurate four terminal-pair impedance measurements to 10Mhz; and transportable capacitance standards of greater stability and environmental resistance.

These are but a few of the many deficiencies that need immediate attention. These are the needs that form a major backlog of measurement standards projects at NBS. They must first be overcome before progress can be made to aid industry in advancing measurement science to support the electronic industry and electronic technology. An infusion of funding is essential to catch up with the backlog and to develop technical muscle at NBS to undertake new research and development of advanced measurement capabilities. We estimate that an additional amount of $25 million per year for the next 5 to 7 years is needed to get back on solid ground and rebuild our national measurement standards competence.

The IEEE considers this matter of great importance to the national interest. We have recommended to the Department of Defense that such measurement deficiencies imperil our defense systems and have urged a study within DOD to explore existing and future needs and solutions. The Congress may wish to have the Office of Technology Assessment undertake a similar study in the broader national interest.

The IEEE statements made herein seek to awaken all of those in our nation involved with protecting and promoting our most fundamental technical resources. Measurement and their underlying calibrations seem to be taken for granted by many otherwise knowledgeable people, just as the millions of measurements associated with production and readiness inspections of such systems as the space shuttle were taken for granted. Until something goes wrong, few realize the significance that precise, accurate and dependable measurements play in our high technology culture. Our national measurement resources require constant maintenance just to retain our momentary position. To advance technically, our measurement capability must advance. Both maintenance and advancement must receive our constant vigilance and attention to avoid the atrophy that can create disasters at worst, and delays at best.

SUMMARY

The specific concerns of the IEEE regarding the Department of Commerce budget for the National Bureau of Standards are as follows:

(1) That the overall NBS appropriation should reach levels greater than $200 million as soon as possible. Numerous programs are underfunded and weaken the effectiveness of all NBS programs as a result.

(2) That the NBS demonstration personnel management program be provided necessary funds for earliest possible implementation. The lack of added funds to start the effort is false economy and can only damage programs already in place.

(3) That funding in 1988 for the Institute for Computer Science and Technology (ICST) be raised to levels equivalent to $10 million in 1985

dollars. Cuts made to the ICST funds over the past few years have had a serious detrimental effect on the degree of ICST contributions to the needs of the U.S. industry and to its users. Over the next three to five years, ICST funding needs to be raised to $15 million.

(4) That the budgeted amounts for fiber optics, millimeter wave/microwave, and product control and quality assurance be increased by $25 million over amounts received in 1987. This year's DOC budget requires for funding for NBS is inadequate to support the most basic needs of the measurement standards elements and programs of NBS. Some small increases have been requested for lightwave measurement technology and product control and quality assurance. None have been requested for millimeter wave and microwave, which is most disappointing. All three of these areas need a major infusion of funding. Lightwave measurement technology needs an additional $9 million, product control and quality assurance needs an additional $8 million; and millimeter wave and microwave needs an additional $8 million. All of these areas have had visibility as initiatives in former budget submissions and were extremely deserving of support then, but in significantly increased amounts.

(5) That competing program within NBS not be allowed to siphon funds from the above measurements standards programs if reductions are levied against these other programs, or if funds are added to the measurement standards program.

(6) That where the DOC or OMB have included requests for funding of initiatives that address the measurement technology deficiencies disclosed in this statement, they receive the highest priority. Such initiatives have made their way into the budget process in the last three years, only to be eliminated or out-ranked by other non-measurement technology efforts. While many of these other initiatives are technically attractive, their presence results in the atrophy of the measurement standards resource. Although a zero growth or shrinking budget base has existed at NBS over the past several years, new programs and projects have been added. These, typically, have resulted in further draining

of funds available to the measurement technology programs at NBS. We are opposed to any such actions. Our recommendation to raise the NBS budget above the $200 million level should provide some relief to the destructive financial conflicts that now exist.

STATEMENT OF RICHARD J. GOWEN, CHAIRMAN-ELECT, BOARD OF GOVERNORS, AMERICAN ASSOCIATION OF ENGINEERING SOCIETIES

Senator HOLLINGS. We next have Mr. Gowen.

Mr. GOWEN. Senator, I am Richard Gowen. I am also an electronics engineer. I am president of the American Association of Engineering Societies.

Senator HOLLINGS. Your association gives him business?

Mr. GOWEN. Our association, sir, is the umbrella association. IEEE is our largest constituent, and we work together.

Senator HOLLINGS. I have never heard of so many engineers. All we hear in the Congress is, "We don't have any engineers." I thought the Japanese had them all. [Laughter.]

Mr. Drew. We need to try to avoid that, sir.

Mr. GOWEN. I am involved in the universities; I am a college president. I am also involved in supercomputers. I speak to you from a background of urgency in American competitiveness.

Senator HOLLINGS. Supercomputers, not superconductors, now.

Mr. GOWEN. Supercomputers, sir; they are very large computers. I represent this morning the American Association of Engineering Societies. It is the umbrella organization. IEEE is a member, and local committees are in the society.

Our view on the National Bureau of Standards is that it is a most important part of our Nation's ability to respond. Russell has spoken very carefully on a number of items. I would like to add just a few items, if I could, addressing the concept of science and measurement standards at the National Bureau of Standards.

The aspect of having a group in the Government that provides a standards base for our industry and our competitiveness is absolutely essential for your group. If we are going to compete with the Japanese, we need to be able to do it well. We need that support. The Bureau of Standards, as you so well addressed in S. 907, is bringing that into being.

I would like to touch on the Center for Building Technology and the Center for Fire Research. These are two programs in which there is some very serious concern. Last year, the Congress agreed to reduce funding for these programs in exchange for an agreement with the administration not to propose further funding cuts.

Apparently that has happened, in which the administration's budgets has proposed further funding cuts. We call that to your attention. That agreement apparently has been broken and we are concerned about that. The Center for Building Technology opened the Center for Fire Research for this Nation's continued building support and for the safety of our people. I speak to you from a point of view of not only are we concerned about the high technology areas; we are concerned about the broad technology areas. The areas that are building, the areas assorted with the ability to make sure our fire protection and control exists.

There is a need for those areas many times more than what we thought we would develop the technology, but as we build more and more high-technology areas, new materials, new types of materials are built that are used every day in our industries, we need to have a way of controlling those, protecting those.

The Bureau of Standards provides that. I would also like to speak in terms of the Institute for Computer Science and Technology. I would like to speak to it from the point of view of the standards development which are done there.

The need that we face today is we are competing with the Japanese in a way in which lots and lots of things are happening. We need to be able to bring all our resources together. NBS is an ideal way to make that happen. We would like to strongly ask you to please, if the committee could, if the Congress would, put back the resources that are needed to have a strong act for our initiatives to have computer support, to have computer standards.

There are many areas of concern, and we would like to see the National Bureau of Standards supported. We support what you are doing with S. 907. If there is any way we could be of further assistance, let us know.

[The prepared statement of Richard J. Gowen follows:]

AAES AMERICAN ASSOCIATION OF ENGINEERING SOCIETIES

Testimony of

Richard J. Gowen
Chairman-Elect, Board of Governors

on the

National Bureau of Standards

Mr. Chairman and Members of the Subcommittee:

My name is Richard Gowen. I am the Chairman-Elect of the Board of Governors of the American Association of Engineering Societies (AAES) and I am pleased to present its views on the FY 88 Budget Request for the National Bureau of Standards.

AAES is a multidisciplinary organization dedicated to advancing the knowledge, understanding, and practice of engineering in the public interest. Its members represent the mainstream of U.S. engineering--over half a million engineers in industry, government, and education. The member societies of AAES are:

-- Institute of Electrical and Electronics Engineers
-- American Society of Mechanical Engineers
-- American Society of Civil Engineers
-- American Institute of Chemical Engineers
-- American Institute of Mining, Metallurgical and Petroleum Engineers
-- Institute of Industrial Engineers
-- American Nuclear Society
-- American Society for Engineering Education
-- American Institute of Plant Engineers
-- Society of Women Engineers
-- Society of Fire Protection Engineers
-- National Institute of Ceramic Engineers
-- American Indian Science and Engineering Society

AAES believes that the funding level of NBS should exceed $200 million a year and is pleased to see a step towards this goal in the $138.6 million budget that the Administration has proposed for fiscal 1988. However, of the $16.2 million increase in the budget over fiscal year 1987, $13.6 million (82 percent) is assigned to such administrative items as pay increases, retirement benefits, depreciation, and travel and communications costs. While these increases are important, the net increase in program budgets is only $2.9 million. AAES, therefore, recommends additional funding for vital NBS programs.

Introduction

The National Bureau of Standards has a legitimate role as the government agency that supports the nation's science and technological efforts. It is the unbiased arbiter of numerous issues relating to metrology, the science of measurements. As such, it provides a sound national system upon which the measurement of physical quantities are based. This service is vital to new product research, increased productivity, the assurance of quality, the maintenance of equity in trade, and in a multitude of space and defense applications. AAES views it as the most important component of all the Department of Commerce efforts to advance, aid, and support American industry.

Yet, despite the critical and elemental role of NBS, its basic programs have been historically underfunded. As the national interest required, the NBS has been assigned additional programs, which have also been underfunded. Although the NBS has carried out its responsibilities with a high level of scientific competence, chronic shortages of resources for both primary and secondary activities have sapped its financial and technical vitality.

While the present budget deficit precludes the possibility that the NBS budget be raised to $200 million this year, we would recommend that the NBS budget be built up to this level over the course of the next three-to-five years. We further recommend that NBS consult with technical and industrial organizations to set priorities and goals.

Measurement Science and Precision Measurement Standards

There has been a steady decline in the capability of the Federal government to assure the veracity and authenticity of precision measurements used in the marketplace and in defense programs. U.S. industry needs precise state-of-the-art measurements and measuring systems to provide advances in technology, to perform research, and to design better, more competitive equipment. Precisely controlled measurements are at the heart of technological advances and product competitiveness. The ability to perform these measurements gives a nation the edge in the global trade in technology. AAES is gravely concerned that work on more precise and accurate measurements in the U.S. is lagging, jeopardizing our position in international markets.

While the National Bureau of Standards has spearheaded the development of a national measurement system, its leadership has been undercut by inadequate funding and the addition of secondary functions. This has led to the delay of new products and the development of independent measurement systems which needlessly duplicate each other.

The lack of adequate resources to meet the needs of a national measurement system is particularly critical in electronics. This technology forms the largest manufacturing group in the U.S. with 2.3 million employees. The $215 billion electronics market represents about 5.5 percent of the gross national product and is growing. Export of electronics equipment is now about $40 billion. However, while exports exceeded imports by $5 billion five years ago, imports surpassed exports by an estimated $12 billion in 1986. One reason for this reversal is the failure of the NBS to develop measurement standards. In some frequency bands such as those needed for new satellite communication systems, no adequate NBS measurement standards exist. Similar deficiencies exist in fiber optics, in millimeter wave and microwave technology, and in alternating current measurement. AAES estimates that an additional $25 million a year for the next 5 to 7 years is needed to restore our national measurement standards.

The Center for Building Technology and the Center for Fire Research

The Administration's fiscal year 1988 budget proposal calls for merging the Center for Building Technology (CBT) and the Center for Fire Research (CFR) and drastically cutting available funds for these unique and important programs. The Administration proposes to reduce NBS building research and fire research to $5 million base funding in fiscal 1988, down 50 percent from $10 million in fiscal 1986.

Last year, Congress agreed to reduced funding for CBT and CFR at the level of $9 million in fiscal 1987 in return for the Administration's agreement not to propose further funding cuts for building and fire research. Release of the Administration's budget indicates that this agreement has been broken, a development that AAES views with great concern.

As in previous years when the Administration proposed outright termination of CBT and CFR, the rationale for merging and cutting these research programs is that their activities are more properly the responsibility of the private sector and state and local governments. This position, which Congress has rejected repeatedly, belies the numerous testimonials filed by a variety of organizations that stressed the unique services performed by the Centers for Building Technology and Fire Research. Furthermore, given the Administration's expressed commitment to improving U.S. economic competitiveness and technological development, the continued budget assault on CBT and CFR is perplexing and misdirected. Foreign competitors continue to strengthen their position in construction through increased research and development. NBS building and fire research improves the usefulness, safety and economy of buildings and enhances the international competitiveness of U.S. construction services and products.

We support, without equivocation, full funding for the Center for Building

Technology and the Center for Fire Research. Their specialized laboratory facilities and expert professional staffs are essential public resources that should be preserved -- not destroyed.

The Center for Building Technology

The building industry plays an extraordinarily important role in the economic life of the nation. About 10% of the GNP is produced by the building industry annually and almost two-thirds of the nation's wealth is invested in constructed facilities. The Center for Building Technology--the national building research laboratory--is essential to maintaining the continued competitiveness of this sector. CBT performs field, laboratory, and analytical research to develop measurement techniques and to evaluate the performance of construction materials, components, and systems. The Center has conducted significant programs in advanced computation and automation, structural engineering, earthquake hazard reduction, and on building physics, materials, and equipment.

CBT is also important because it is the only research program capable of studying in an integrated way the complex technical issues that the building industry as a whole must confront. Because of the industry's size and diversity, it is difficult to imagine any institution in the private sector or at the state or local level capable of assuming CBT programs or distributing the findings adequately on its own. This interdisciplinary laboratory integrates complex issues in a way that more narrowly focused, proprietary research and development cannot.

The Center for Fire Research

The Center for Fire Research also contributes to public safety in a way that no privately funded research effort could. CFR explores the processes that initiate, propagate, and suppress real fires. These investigations lead to the development of realistic material test methods to control and extinguish fires. Like CBT, CFR does not promulgate and enforce standards and regulations.

Instead, it provides technical support to groups devising voluntary standards and model codes, as well as the building industry, engineers, and fire organizations.

CFR is the world leader in the development of mathematical fire models and computer simulation. Given the disturbingly high fire death rate in the U.S., the importance of CFR programs cannot be overemphasized. Despite an improved U.S. fire loss record over the last decade, each year U.S. fires result in over 6,000 deaths, 200,000 injuries, and $7.5 billion in property losses.

A drastic reduction in CFR funding would seriously hamper the development of fire control technology in the United States. If the specter of eliminating lifesaving opportunities does not deter efforts to curtail CFR programs, the cost-saving implications should persuade a budget-conscious government to reconsider the proposal. Fire-safe building design can save money for all sectors of our society. Through its ongoing research efforts, CFR hopes to reduce fire deaths by 3,500 a year and fire protection costs $15 billion a year by the end of the century. The budget request for CFR is, at best, harmful to the economic and social interests of the American people, and is, at worst, life threatening and irresponsible.

The Institute for Computer Science and Technology

Another critical operating unit of NBS is the Institute for Computer Science and Technology (ICST). ICST plays a major role in establishing computer standards and specifications and, as such, serves the Department of Commerce (DOC) goals of promoting the development and application of science and technology in U.S. industries and increasing the competitiveness of U.S. telecommunications, computer and information products, and related services. It also supports the DOC's goal of increasing the worldwide acceptance of U.S. technical standards and of improving the Federal government's cost-effective use of computer and telecommunications technology.

ICST staff serves a key role in over sixty voluntary industry standards committees, providing critical information in the development of technical specifications and in measurement and testing of draft standards. The ICST presence ensures continuity in the drafting process. For example, it is clear that the many suppliers of computer networking services and products need the unifying force of an unbiased, internationally recognized and respected third party if we are to avoid an uncontrolled, disruptive, and wasteful proliferation of incompatible computer products. This situation would be chaotic for both vendors and users, especially users like the Federal government. By developing and facilitating the adoption of key standards, ICST provides a fundamental underpinning for the computer industry that greatly stimulates innovation and enhances productivity.

The level of support for the ICST should correspond with the importance of its technical areas. These areas include software engineering, information systems engineering, data base management, computer graphics, computer security, office systems engineering, computer networking, computer architecture, and computer storage media and techniques. AAES seriously objects to ICST funding levels contemplated for 1988. The Institute was funded at $10 million in 1985, $9.6 million in 1986, and $7.5 million in 1987. Failure to fund ICST at adequate levels will lead to a major loss to U.S. industry and seriously handicap its competitive posture in domestic and international markets. We strongly support a funding level equivalent to the 1985 level of $10 million, adjusted upward for inflation. This should be followed by real increases to bring the ICST budget to at least $15 million.

Other Programs

Although increases in the proposed 1988 budget are scheduled primarily for administrative costs rather than programs, AAES supports continued funding for two important base programs. The first is the removal of hazardous polychlorinated biphenyls (PCBs) and asbestos from NBS facilities in Gaithersburg, Maryland, and Boulder, Colorado. We also support continued funding for the cold neutron research facility. AAES also believes that additional funds should be added to the NBS budget so that the alternating personnel management system for NBS scientific and engineering personnel included in the 1987 authorization can be implemented. This system will allow the director of the National Bureau of Standards to pay more competitive salaries in order to attract, motivate, and retain top-quality scientists and engineers.

In addition, AAES strongly supports the proposed $3.35 million increase for the Process Control Quality Assurance Initiative, whose goal is to assist U.S. industry in matching or exceeding the quality of foreign goods in the world marketplace. We also back the increase in funding for research on high performance composites, which play an important role in the aerospace industry. Furthermore, AAES strongly supports funding for a pilot program to compile computerized databases. These will provide engineers and scientists with ready access to the most up-to-date reference standards.

In addition, AAES is pleased to note the continuation of the postdoctoral Research Associate Program, which helps the NBS attract top-quality young engineers and scientists.

Summary

AAES believes that the engineering programs at the National Bureau of Standards provide essential tools that enable engineers to transform scientific knowledge into technological breakthroughs and commercial applications. These tools include new engineering data, new measurement concepts and techniques, reference materials, and the engineering practices necessary to initiate and improve standards and codes.

For many years, NBS has made major contributions to technological innovation, productivity, and enhanced public safety. However, the budget of NBS is not growing sufficiently to support many essential programs. In 1975, the appropriation for the Bureau was $60.3 million. The 1988 budget request of $138.6 million, when adjusted for inflation, represents only a slight increase in funding despite the expansion of the Bureau's measurement tasks and the imposition of additional responsibilities. In addition, the number of NBS employees has decreased from 3,800 in 1965 to about 2,900 today.

This decline in support for NBS has come at a time when valid measurements and standards are urgently needed. Additional support is essential if the U.S. is to continue to devise competitive commercial applications for new and rapidly developing technologies.

LEADERSHIP OF THE NBS

Senator HOLLINGS. The leadership in this area is good, don't you find?

Mr. GOWEN. Yes, sir; we are supportive of the Bureau and the effort.

Senator HOLLINGS. The need to replace the retiring personnel from time-to-time.

Mr. GOWEN. The funding levels will be kept constant. Frankly, it hasn't had a chance to grow and keep up with the technology.

Senator HOLLINGS. The Center for Building Technology, do you build concrete dams?

Mr. GOWEN. Sir, when you begin to look at the building technology that is going on today, the development of building technology is just startling, and the Center of Building Technology has done some very vital things.

Senator HOLLINGS. Is it supposed to bend?

Mr. GOWEN. Sure, it is.

Senator HOLLINGS. Wave up and down?

Mr. GOWEN. Not like the Takoma Narrows Bridge.

Senator HOLLINGS. How about down at the Brice Williams Stadium at the University of South Carolina? Would you hold a meeting on the second tier down there for me, please? [Laughter.]

Mr. GOWEN. I am not familiar with that, but I suggest you are telling me something.

Senator HOLLINGS. I was at the Carolina versus Nebraska game, and people started jumping up and down and that thing started going up and down, and they said, "That is supposed to bend." I said, "You tell that to the people. I want to get out from under this thing."

I still don't know yet, but it is the most unsafe looking thing I have been in.

Mr. GOWEN. My colleagues in civil engineering told me it is plastic. It will bend.

Senator HOLLINGS. It has steel and concrete. I never heard of concrete bending, but I am hacking at it.

Mr. GOWEN. It does bend, and you can put a plane to it, as long as it has flexibility. There is a limit as to how much it should bend, I would have to say.

Senator HOLLINGS. That is right.

Mr. GOWEN. I would hate to testify inaccurately to you.

Senator HOLLINGS. Do you have any members from South Carolina?

Mr. GOWEN. I do, and I will talk to the civil engineers.

Senator HOLLINGS. Will you talk to them?

Mr. GOWEN. We will, and we will try to get you some information back on it, sir.

Senator HOLLINGS. That would be interesting. I was down there. I have never seen such a thing. I moved out from under that thing.

Mr. CAUTHEN. You can see it across the field literally going up and down.

Senator HOLLINGS. Is that right? I saw that thing going up and down. I said, "I haven't drunk that much." [Laughter.]

All right. We have to continue these endeavors here, but they have just been trying to close down government, and when they can't do it one way, they put user fees on it, or they put in graduation of the centers, as we have heard in testimony, and everything like that, any way in the world to dismantle it, but we have to start back again.

Mr. GOWEN. There are some things industry needs very much. We appreciate it.

Senator HOLLINGS. Yes, sir. We appreciate your appearance here this morning.

Mr. DREW. Thank you very much, Senator.

Senator HOLLINGS. Thank you.

The third panel will speak on the National Oceanic and Atmospheric Administration.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF MARGARET DAVIDSON, DIRECTOR, SOUTH CAROLINA SEA GRANT CONSORTIUM

Senator HOLLINGS. We have Ms. Margaret Davidson from South Carolina, followed by Dr. Wayne Beam, also from South Carolina, and Mr. Gordon Robertson to speak on NOAA's programs.

Ms. Davidson, you have submitted a statement. All the testimony will be entirely put in the record. You may highlight.

Ms. DAVIDSON. I would like to do that and take a short time. I want to thank you, Mr. Chairman, for the subcommittee as well as the full Appropriations Committee, for the support that you have shown for Sea Grant over the years.

I presume that that is because you are aware that Sea Grant has developed a rather effective network that does focus on the relationship between research and technologies transfer to foster economic growth and competitiveness.

A couple of examples I just want to mention are in South Carolina. As you know, we are engaged in a research program looking at hard clams to develop their viabilities in aquaculture species.

Although I don't mention it much in Columbia, the primary beneficiaries of our research have been a couple of commercial corporations that operate in the Pacific Northwest and in the New England areas. They have developed viable operations of research that are being conducted in South Carolina.

Senator HOLLINGS. You can conduct marine research in Carolina waters for the New England fishermen?

Ms. DAVIDSON. Yes, sir; we do. We have also worked with 11 other sea grant programs from New Jersey to Texas to development an expotential increase in the soft shell crab industry for this country. In fact, more than 30,000 tons of soft shell crabs were exported to Japan in 1986.

I want to introduce a booklet that tells you a little bit about how this industry has grown in the past decade.

These kinds of concepts of working together, the university, working together with industry to promote economic growth, were revolutionary when Sea Grant began in the late sixties and early seventies. As you well know, it is now the hallmark of the current administration and Congress.

The recent Packard-Bromley report called for an increased investment in university-based research for economic growth, and indeed, the administration is now calling for a doubling of the National Science Foundation's budget over the next 5 years in order to foster economic development.

Considering that emphasis on the relationships between the university research and industry development and Sea Grant's long standing in this area, I think that the proposed Senate reauthorization levels for Sea Grant are most realistic, in fact, more realistic than the administration's approach this year or any of the last 6 years.

In fact, you adjust for the inflationary erosion that has occurred in Sea Grant. Sea Grant is down by about 30 percent since 1980. What that means, Mr. Hollings, is that the larger programs have been stymied in their efforts, and the smaller developing programs, like the South Carolina Sea Grant College Program, have been limited in their ability to take advantage of economic opportunities. The $46 million that your reauthorization bill permits for the core program will allow us to maintain and sustain our momentum.

In addition, the bill provides the most significant improvement to the Sea Grant programs since the original legislation, and I am referring to the strategic research initiatives. As you may recall, they are sort of an analog to the Defense Advanced Research Projects Agency, which has made considerable contributions to the defense research establishment.

What the strategic research initiatives will do, sir, will provide target support for some critical national priorities that will permit us to address them in short-term focuses over about a 5-year period. These are efforts that would be above and beyond our current capacity and capabilities within the Sea Grant and its core activities.

Given Sea Grant's approach of working with the Federal Government and State government and private industry to effect an economic partnership, I think that the $5 million for the Strategic Research

Program would be well spent. Sea Grant is a good investment. We are all mindful of the fiscal realities, no one more than you.

We do appreciate your support and your belief than Sea Grant is worth $52 million for this Nation.

Senator HOLLINGS. It is the best program we have, there is no doubt about it. Senator Weicker of our committee is also a strong supporter, and, of course, Claiborne Pell has been interested over the years. We appreciate it.

Ms. DAVIDSON. We appreciate your support.

Senator HOLLINGS. Thank you. We will hold up here, if you don't mind. I have another rollcall vote.

[The statement follows:]

PREPARED STATEMENT OF MS. MARGARET DAVIDSON

Director, South Carolina Sea Grant Consortium

On behalf of the
National Association of State Universities and
Land-Grant Colleges
and the
Sea Grant Association

Thank you, Mr. Chairman, and good afternoon. I am Margaret Davidson, Director of the South Carolina Sea Grant Program.

I appreciate the opportunity to testify before this subcommittee on the appropriations needs of Sea Grant. I speak on behalf of the Marine Division of the National Association of State Universities and Land Grant Colleges (NASULGC) and the Sea Grant Association.

The Marine Division of NASULGC is composed of 90 major marine research and education institutions in the United States. They are committed to the understanding, conservation and development of the ocean and coastal environments. The Sea Grant Association consists of 40 colleges, universities, research centers, industries and consortia, all dedicated to enhancing the nation's capability to develop, use and manage our marine resources. Between the two bodies, we represent most of the nation's academic and, indeed, total civilian, marine research, education, outreach and technology transfer capacity.

Mr. Chairman, we are here for the 7th consecutive year to address the fundamental question of federal support for the National Sea Grant College Program. Consideration of appropriations is a time to assess the effectiveness and efficiency of the program's past and to shape the future. We believe that Sea Grant plays an important role in this nations'

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civilian efforts to effectively use the ocean and Great Lakes resources and environment.

On behalf of the Sea Grant network, I would like to thank you, Mr. Chairman, and the members of this subcommittee and the full Appropriations Committee for your strong support over the years. We are deeply appreciative.

I wish to briefly address the following items today:

1. The Sea Grant Record;
2. Sea Grant's Relationship to National Economic Competitiveness;
3. Sea Grant's Role in Future U.S. Ocean Research and Policy;
4. Strengthening of the National Sea Grant Program; and
5. Appropriations Levels.

1. The Sea Grant Record

The Sea Grant program fills an unique niche in American marine science activities. The Sea Grant programs have developed a responsive network of institutions and scientists. Today the nationwide network is comprised of twenty-two Sea Grant Colleges and seven institutional programs. Together they manage a network of more than 300 universities and affiliated institutions, including a number from inland states.

This broad and effective network was created in a remarkably short span of time. Sea Grant began in 1966 as an experiment with only partial models as a guide; it has managed to combine research, education, technology transfer and public service in a university-based program designed to enhance and promote the wise use of Great Lakes and marine resources. The first programs were located at major marine-oriented universities. But soon institutions that originally were not part of the traditional marine community were participating and making major contributions.

Initially some thought that Sea Grant was just another oceanography program, it soon became apparent that Sea Grant was much more. It concentrated on the use and protection of resources. It focused largely on the nation's estuaries and coastal margins, partly for logistical reasons. But more importantly these are the most productive regions for food, minerals, living space and recreation. They are also the regions where the most pressing resource and environmental problems occur. Sea Grant confronted the opportunities and problems facing our society, whether economic development, environmental protection, introduction of new fisheries, or something else entirely. And the network brought new disciplines into the broad field of marine studies: biochemistry, genetics, microbiology, immunology, pathology, toxicology, pharmacology, engineering, law and policy studies, food science, agricultural economics, and other speciality disciplines. More radically, Sea Grant helped unite many disciplines into multidisciplinary and interdisciplinary research and educational strategies.

And always, the network recognized the need to transfer research knowledge to those who needed it through outreach education, technology transfer and communications. Today these achievements are routinely accepted by the public and by the universities. But at the time they were revolutionary, and this revolution was achieved in a span of less than one generation.

More than these institutional achievements, what is important is that Sea Grant has produced many economic benefits and offers a continuing capability to address major national priority concerns. Outside analyses have shown that Sea Grant is a cost-effective, highly productive program. Our history suggests that program has much to offer in scientific leadership and in economic competitiveness.

2. Economic Competitiveness

A visionary product of the 1960s, Sea Grant embraced and pioneered many of the now-accepted strategies of the late 1980s. Society is now again looking to the universities for ideas that will lead to technological and economic developments and for solutions to environmental or resource conflicts. Among Sea Grant's timely attributes are the following:

- -a broad multidisciplinary approach;
- -a combined university/industry/government partnership;
- -a network of institutions operating across the nation;
- -a grass-roots, knowledge-based identification of problems; and
- -a capacity for technology transfer and feedback.

Competitively-funded, university-based research has always been America's unique contribution to the ongoing scientific revolution. And now current national science policy is returning to these roots and reemphasizing old themes in new settings. A recent report, widely known as the Packard-Bromley report ("A Renewed Partnership," a Report of the White House Science Council, Office of Science and Technology Policy, Washington, D.C., 1986), emphasizes the need for multidisciplinary, university/industry/government partnership approaches to science. These are areas where Sea Grant offers a model. This report calls for increased investment in university-based science as a fundamental base for economic growth and competitiveness. Sea Grant has been that base, even as the nation's coastal sector has surged in economic importance.

The current scale of activity and the need are greater than ever. But the theme is not new. The need to accelerate agricultural production and efficiency led to the establishment of the land grant college system with its dual reliance on research and extension. And in 1966, Sea Grant was established to provide innovation and enhance the economic competitiveness of the nation's coastal and ocean sectors.

Indeed, the economic benefits of the program were the main arguments that led Congress to preserve Sea Grant when attempts to terminate the program began in 1981. The Sea Grant network showed then that selected economic benefits resulting from the program equalled $227 million on an annual basis--nearly as much as the total federal appropriations over the previous 13 years. A 1982 study found that a sample of projects funded in 1975 had yielded annual sales (just one measure of economic benefits) in excess of $44 million, or more than the highest annual federal funding level ever reached by Sea Grant. Since 1981, reports on these and other benefits have been publically and regularly issued.

Mr. Chairman, there are many examples from the Sea Grant network to emphasize this theme. For instance, in South Carolina a cooperative research effort involving the S.C. Sea Grant program, the S.C. Wildlife and Marine Resources Department and a local private clam farm successfully tackled one of the major impediments to the development of hard clam mariculture: the fact that high cost and general unavailability of large (7/0 mm) seed clams required commercial operations to build expensive nursery facilities. Through the Sea Grant project, upflow culture systems for the nursery culture of clams were tested and demonstrated; these systems are now being adopted by major clam producers around the country. Four of the companies are:

Aquaculture Research Corp.
P. O. Box 597
Dennis, MA 02638
(617)385-3933
Contact: Dick Krauss

Aquafarms Corp.
P. O. Box 1520
Tuckerton, NJ 08087
(609)296-6967
Contact: Todd Hollaway

Bluepoints Company
West Sayville, NY 11796
(516)589-0123
Contact: Stan Czyzyk

Coast Oyster Company
P. O. Box 327
Quilcene, WA 98376
(206)765-3345
Contact: Jim Donaldson

These companies have benefited from the upflow technology examined and proven through this research project in several ways: a reduction in labor costs of approximately 60%, along with marked decreases in the costs of electricity and of pumping water through the new nursery system.

Another aspect of economic competitiveness is the quality of life for our people and the savings realized through transfer of technology. Another example of this kind of impact can be found in the Great Lakes area. Sea Grant research, publications and advisory efforts are helping property owners along thousands of miles of Great Lakes shorelines (afflicted by record high water levels) save millions of dollars through changed tax valuations and avoiding expenses on useless shoreline protection gimmicks. They are also helping localities and property owners introduce useful protection measures where applicable and to plan better for the future. As an aside, in keeping with the idea that the Great Lakes serves as a laboratory for the ocean, the effects of rising water levels seen now on Great Lakes Shores may be a forerunner of the effects of the expected increases in sea level during the next century.

Sea Grant continues to demonstrate its ability to develop regional and national economies. In a major cooperative effort, Sea Grant advisory agents--from Delaware, Maryland, Virginia, North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas--have helped producers increase the soft-shell crab yield exponentially. Improved crab-shedding facilities have drastically reduced crab mortality and improved handling of molting crabs. Soft-shell crab operators using Sea Grant-assisted methods have increased production from approximately 100 dozen crabs in 1975 to 652,750 dozen in 1984. In 1984, 30,000 dozen were exported to Japan. Cooperative work, including research, continues, and involves not only Sea Grant and the crab producers but local, state and federal agencies and three fisheries development foundations. A recent publication describes this success story in detail.

One could continue a long list of economic, environmental and human accomplishments that enhances this nations' competitiveness.

This focus on economic competitiveness has led to a proposal to double the National Science Foundation (NSF) budget over five years and to create a number of Science and Technology Centers. The multidisciplinary centers will be university-based and provide important links with industry. They will transfer research and technology that is scientifically exciting and economically significant.

The Marine Division of NASULGC and the Sea Grant Association endorse the recommendations for NSF. We want to point out, however, that the Centers appear to have the same operating rationale as Sea Grant. The overall economic competitiveness approach would appear to justify not only continuation of Sea Grant, but also an increase in funding.

3. Future U.S. Ocean Research and Policy

Sea Grant is the nation's principal source of university academic research in the coastal oceans and estuaries. It is a primary national resource for information on water quality, aquaculture, marine biotechnology, seafood and other marine products, fisheries recruitment and productivity, ocean technology, coastal engineering and ocean policy. Sea Grant is a vital link between marine science and public policy. From its beginning, a problem-oriented focus has made the program multidisciplinary in approach and has allied it with industry and government.

Moreover, Sea Grant is the primary U.S. agent for research on the Great Lakes. Apart from the intrinsic value of these waters, the Great Lakes also serve as a laboratory for improving scientific knowledge about vital aspects of the larger ocean environment. In particular, they provided new understanding about the fates and effects of toxic chemicals in the environment, and the ecosystem approach to fisheries.

A national phenomenon, based on a growing, unified concern about global environmental change, is becoming the focus for a new initiative of ocean sciences. Some environmental changes that arouse interest are the result of natural phenomena. However, it is the impact of man-made changes on the environment and the need to understand the impacts on natural processes that causes the greatest concern and impels many ongoing efforts. Such impacts, or possible impacts, include ozone depletion, the "greenhouse effect" and its accompanying sea level rise, overfishing of stocks, habitat destruction, and the release of toxic chemicals into the environment. Because of their complexity, it is impossible to understand these concerns in isolation.

Sea Grant has important capabilities for the broad marine science agenda. The program has maintained a long tradition of fundamental, multidisciplinary work that is central to the broad global change initiative. And it has established a role as the nation's coastal ocean science and technology program. Consequently, Sea Grant can provide a vital link between global ocean research, man and the shoreline. And the program can perform work needed on coastal ocean and estuarine processes. Because Sea Grant projects operate in every coastal state, virtually every coastal county, the network of scientists and institutions also offers the capacity for providing "ground truth" for remote sensing activities.

In addition, Sea Grant is the primary academic home for research on marine fisheries. It fosters interaction between scientists, fisheries management agencies and fishermen. The network has provided key research on fisheries recruitment, critical habitat and other factors crucial to the study of biological productivity. Although ocean lithosphere studies reach far beyond Sea Grant's mission, Sea Grant is a major force in the study of fates and effects of toxic substances in the marine and aquatic environments. Sea Grant work in ocean technology has already begun to play a role in ocean ridge crest process studies. And Sea Grant investigators are involved in the study of an accelerated environmental change "experiment" of natural and man-induced impacts in the Great Lakes. These studies offer the most comprehensive scientific base for the study of change now available.

4. Strengthening of the National Sea Grant Program

The proposed Strategic Research Program in Sea Grant, along with other proposed changes in the authorizing legislation, will increase the Sea Grant network's existing capabilities. The network can increase its contributions to economic competitiveness and expand its studies into global change and critical ocean, coastal and Great Lakes problems.

I would like to explain briefly the Strategic Research Program, which is the critical element for the future productivity of the Sea Grant network. This depends, of course, on an adequate funding base.

This program would:

- establish sound criteria for developing research priorities in areas of national need;
- provide targeted support for 3 to 5 efforts that are above and beyond current Sea Grant capacity;
- utilize the existing management, programming and institutional capabilities of the Sea Grant network to facilitate the implementation of the program;
- use flexible mechanisms to achieve the goals of the program; and
- fit very logically in the context of Sea Grant goals and universally acclaimed national goals.

We have suggested some examples that are uniquely poised for immediate return on research investment:

- Marine Biotechnology, with emphasis on the use of emerging biological techniques in aquaculture and food production;
- Ocean Technology, for exploration and development of the EEZ;
- Estuarine Processes, a national experiment on fundamental estuarine functions;
- Toxic Substances, affecting living marine resources and human health; and
- Fisheries Oceanography, use of new technology to predict shifts in fishery stocks.

One of the analogs for the Strategic Research Program might be the Defense Advanced Research Projects Agency (DARPA), one of the more innovative and effective research funding mechanisms at the federal level. DARPA targets funds for promising areas of strategic need and/or opportunity, and identifies them on a rolling, five-year basis. The effect on the broader, defense research effort has been considerable.

The research areas discussed in the Sea Grant bills are items of intense national interest. They are also areas in which creative excitement and planning are taking place in the scientific community. Sea Grant could implement significant research efforts in these areas within a short period of time. Several would involve substantial marine policy efforts; others, scientific and engineering endeavors. Several would also require cooperative undertakings with various other parts of NOAA and with other agencies, such as NSF, ONR and EPA.

Mr. Chairman, the proposed Strategic Research Program and other innovations will help build a stronger Sea Grant program. We are certain that the investment will pay dividends for the marine community and the country as a whole.

5. Appropriations Levels

The proposed reauthorization legislation, still pending before committee, suggests significant new funding. This legislation recognizes that important gains in marine economic development will be unrealized without additional resources for the Sea Grant program. Further the proposed Strategic Research Program is based on undertaking credible scientific efforts and necessitates a significant addition to the program. But, in light of the proposed additions to the NSF budget and the interest to support competitiveness and the study of global change the Strategic Research Program figures are reasonable.

The other major request from the Sea Grant network is for a boost in the "core" support for the program. There is ample evidence that the Sea Grant network continues to be innovative, productive and forward-looking, and it remains the major national capability in a number of marine resource areas. Despite this known capacity, there is cause for concern that this capability is being seriously eroded:

-Nearly every university Sea Grant program has cut operations. These cuts extend to all areas of the programs, research, education, advisory services and management; and at the institutional level, exceed 30 percent.

-The national Sea Grant office determined that the total number of projects supported has declined by one-third, even as federal administration costs continue to rise. More seriously, the number of graduate students have declined significantly. These graduate students are essential to our future technology base.

-During FY1987, the Sea Grant institutions will operate at a level below the across-the-board-cut level of FY 1986.

-Total dollars for Sea Grant have declined even as NOAA's budget has risen by 20 percent in the past five years.

-In recent years, inflation has taken an additional toll of approximately 20 percent. Since inflation in the sciences and in the universities has substantially exceeded the average inflation level in recent years, the effect on Sea Grant probably has been greater.

The Sea Grant community has reacted responsibly to this austerity through stepping up the level of competition, looking for efficiences, and availing ourselves of new technologies, such as computers, word processors and improvements in telecommunications. Even so, it is evident that management capacity is diminished, educational efforts have declined significantly, expenditures for most research components are down, and the nationwide network of advisory service personnel is being undermined. For a program as efficient and cost-effective as Sea Grant, the erosion has been damaging.

Therefore, authorization levels in the pending Sea Grant bills are based on realism--restoration of FY 1981 levels ($41.8 million) adjusted for changes in the Consumer Price Index (17 percent as of 1985 plus estimates for 1986 and 1987). Funding of $5 million in FY 1988 for the Strategic Research Program is a minimum necessary to achieve credible impacts. Figures for the years after FY 1988 are based on cost-of-living change estimates. We request your consideration in restoring Sea Grant to more realistic levels of effectiveness.

The Sea Grant network request is not based on past inequities. Our request is based on our proven capacity to deliver a high quality product. Sea Grant is a good investment. Even in budgetary hard times, the opportunity for sound investment should not be overlooked.

6. Conclusion

Mr. Chairman, the Sea Grant network is confident and upbeat. Despite some difficulties, with the assistance of the Congress we are a stronger program than we were before, and we are building for the future. The proposed reauthorization measures would significantly increase the opportunities for achievement in that future. We are deeply grateful to you, the members of this subcommittee and the full committee, and your staffs for your support. We appreciate the opportunity to comment on these matters and to work with you.

Thank you.

STATEMENT OF DR. H. WAYNE BEAM, EXECUTIVE DIRECTOR, SOUTH CAROLINA COASTAL COUNCIL ON BEHALF OF COASTAL STATES ORGANIZATION

[Short recess.]

Senator HOLLINGS. Dr. Beam?

Mr. BEAM. Senator, I appreciate the opportunity to come and appear before the subcommittee. I represent today the 35 coastal States, commonwealths and territories that comprise the Coastal States Organization. For the seventh year in a row, as you are aware, the administration has failed to request any funds for the Coastal Zone Management Act for State grants for States to run coastal zone management programs, but we are confident that the subcommittee and the Congress will again provide the leadership to reinstate the Federal share of these funds and uphold the Federal Government's commitment to coastal States to fund their programs.

Last year's enactments of the 5-year CZMA authorization brought a new sense of certainty and direction to the program, and we certainly are thankful for that. I have submitted in the written testimony the authorization levels, and the CSO certainly recommends and urges appropriation of those amounts of dollars.

I will tell you just very simply in two or three points why we think that is a prudent course of action. Our rationale is fairly simple: First, despite what the administration says, the benefits from this program accrue vastly beyond the borders of local and State governments.

They claim that it is a state program, but when we are talking about managing hazards, as we have had so many problems on our coast, as you are certainly aware, and you are looking at fishery, waterfronts and economic development these programs impact, we certainly think that all of them have significance as far as national issues are concerned.

We would just submit that the Federal Flood Insurance Program, the liability this government has in that and any impact that we could have on abusive outlays in that area would certainly be a national interest issue. Second, most coastal States are financially unable to carry out their responsibility for managing the States' ocean and coastal resources.

For instance, in our State of South Carolina, we are under court orders, as you are well aware, to improve our prisons and mental health systems, and we simply don't have the money that it would take to run the program on our own.

The State rightfully appropriates between two and three times more money than is required to match the amount of Federal money we have that we get from NOAA.

However, it takes that amount of money to run the program in South Carolina, and we could really use a lot more money, as you are well aware. Further, I think the emerging Federal ocean activities proposed for 1988 are going to strain the States; they are going to have major consequences because we are talking about implementation of the Department of Interior's new 5-year CSO oil and gas plan, as well as ocean incineration plans and ocean dumping plans in EPA.

Further, just the normal press of coastal business in South Carolina has kept us awfully busy. Our permit requests are up 300 percent over the last 6 years, and we are predicting about a 35-percent increase in the permanent population in eight coastal counties by the year 2000 in South Carolina.

Third, not all states desiring to join the national program have yet done so, especially in Ohio, where Governor Celeste is supporting new coastal legislation. They are considering joining the national program. We feel the door must be kept open to these remaining States.

Senator HOLLINGS. How many do we have, 29?

Ms. DAVIDSON. Yes, sir.

Mr. BEAM. Twenty-nine, yes, sir. In summary, I would like to say that we believe that the coastal States have shown a willingness to accept the legitimate goals of the national management of the coastal resources, but we do hope to continue financial ability to continue to do so.

CSO respectfully urges this subcommittee to again stake a leadership role in preserving these important national programs by adopting State funding levels for coastal management grants to maintain these union partnership.

Senator HOLLINGS. I thank you, sir. Senator Weicker is so frustrated. He has a bill in to put NOAA out as an independent agency. Of course that is what the Stratton Commission recommended back in the sixties. It never would be approved. It would be vetoed.

I hesitate to engage in an exercise in futility, but we will probably be having hearings on that. They just downgraded the entire effort. Every time the Department of Commerce needs to cut any, they don't know anything about NOAA anyway, so they just cut down there. They don't know what is going on. They could care less.

Mr. BEAM. We are certainly aware of that, sir.

Senator HOLLINGS. Very good.

[The prepared statement of Dr. H. Wayne Beam follows:]

PREPARED STATEMENT OF DR. H. WAYNE BEAM
COASTAL STATES ORGANIZATION

Mr. Chairman and Members of the Subcommittee, I am Wayne Beam. I am Executive Director of the South Carolina Coastal Council and a member of the Executive Committee of the Coastal States Organization (CSO). On behalf of the CSO, a representative association for the governors of the 35 coastal States, Commonwealths and Territories, I appreciate the opportunity to present our views in support of State grant programs authorized under the Coastal Zone Management Act (CZMA) and administered by the National Oceanic and Atmospheric Administration (NOAA).

When the President submitted his proposed FY88 budget to the Congress earlier this year, once again neither I nor my fellow delegates were surprised by the Administration's failure to request funds for CZMA State grants. Attempts by the Administration to eliminate these funds, and ignore the past CZMA funding recommendations of this Subcommittee, have become an annual ritual. This proposed presidential budget is the seventh in a row that zeroes out CZMA funding. If it weren't for the leadership of this Subcommittee and Congress to reinstate the federal share of CZMA funds and to uphold the federal government's commitment to coastal States as partners in the national coastal zone management program, 29 States and territories would have been forced long ago to dramatically reduce the scope of their coastal management programs or discontinue operations altogether.

For the fourth year in a row, the President has proposed a complete rescission of the FY87 CZMA State grant funding approved by this Subcommittee. Fortunately, as in the previous years, Congress took no action on the proposed rescission, and the proposal died. Nonetheless, had this rescission request not been rejected by Congress, 20 of the 29 eligible coastal States and territories would have exhausted their FY86 CZMA grant assistance by the end of this fiscal year. In more general terms, this stop-and-start approach to CZMA state funding over the past five years -- zero funding requests, approved funding by Congress, proposed rescission, released grant payments -- is not conducive to long-term planning so necessary for effective coastal management.

Last year's enactment of the five-year CZMA reauthorization brought a sense of certainty to the national CZM program. Within the reauthorization Act for FY88, $37.9 million is authorized for Section 306 and 306A (administrative-resource management improvement) grants, $1.5 million for Section 309 (interstate) grants, and $3.3 million for Section 315 (estuarine reserve) grants. These funding levels were carefully considered by House and Senate authorizing committees when the CZMA reauthorization was enacted. CSO supports these levels, which we believe represent a clear statement of funding support and budgetary restraint by Congress. For the reasons set forth below, CSO urges this Subcommittee to appropriate $37.9 million for Section 306 and 306A grants, and $1.5 million for Section 309 grants. In addition, CSO urges you to appropriate $3.3 million for Section 315 grants. This $39.4 million total for Sections 306, 306A and 309 grants, we must point out, is essentially level funding compared to FY 87 — in view of inflation, the strength of the dollar, and the addition of Virginia as an eligible CZMA State grant recipient. See graph attached.

We also urge this Subcommittee to set with the Secretary of Commerce a $2,000,000 maximum and $450,000 minimum for allocations under Section 306-306A. These have been the established minimums and maximums for CZMA state allocations for the past three years, and have been effective, given a satisfactory level of funding, in meeting the various funding needs of the 29 federally approved state CZM programs.

THE NEED FOR FEDERAL FUNDING OF THE NATIONAL CZM PROGRAM

Coastal zone management is the product of more than the programs implemented under one act, the CZMA. A tremendous amount of Army Corps dredge and fill operations occur in the nation's coastal zone. Millions of private homes are constructed or repaired each year with borrowed funds made available from private sources because of the coverage by the National Flood Insurance Act. Hurricane and emergency preparation and evacuation routes, necessary to protect the lives of millions of people living or visiting along the nation's shores, are an integral part of coastal zone management. Federal highway construction and maintenance, Navy port facility construction and maintenance, and federal flood control projects necessarily contribute to the "management" of the coastal zone.

The point is that State coastal zone management programs conducted under the CZMA are necessarily linked to federal programs. The CZMA stands today as the only comprehensive tool which encourages federal, State and local governments to cooperatively manage more than 95,000 miles of beaches, bays, ports, harbors, wetlands, estuaries, islands and fisheries. A fully effective national coastal zone management program is only possible through adequate funding of the CZMA Section 306, 306A and 309 State grants. Nonetheless, the Administration repetitively proposes to zero the CZM program.

In justification for its proposal of zero funding for CZM, the Administration states that "because all states desiring to participate in this program have submitted, and are implementing their plans, (sic) responsibility can now be transferred to the program beneficiaries." We must raise three points in answer to this rationale.

CZMA and the National Interest

Who are the beneficiaries of the national CZM program?

Actually we are pleased that the Administration raises this question, for unfortunately, there is a misperception that the benefits of Coastal Zone Management are predominantly State or local benefits. Clearly, there are State and local benefits. But the assertion that the full package of benefits is predominantly local greatly misses the mark.

In 1972, Congress found that:

- There is a national interest for effective management of the coastal zone;
- The resources of the coastal zone are of immediate and potential value to the present and future well-being of the nation;
- A wide range of coastal zone values are essential to the well-being of all U.S. citizens;
- The key to effective management of the coastal zone is for the federal government to assist the states with "dealing with land and water use decisions of more than local significance";

Has there been such a major change in values and responsibilities that these findings are no longer true? Can the Administration ignore that the main purpose of the Coastal Zone Management Act is "the encouragement and assistance of States in preparing and implementing management programs to preserve, protect, develop and whenever possible restore the resources of the coastal zone of the United States"? Is the judgment of the Commission on Marine Science, Engineering and Resources (the Stratton Commission) that "the coast of the United States is, in many respects, the nation's most valuable geographic feature" now to be found faulty? We believe the answer to all of these questions is a simple, but emphatic, no. We believe that the Stratton Commission's words still ring true:

> "The uses of valuable coastal areas generate issues of intense state and local interest, but the effectiveness with which the resources of the coastal zone are used and protected often is a matter of national importance. Navigation and military uses of the coasts and waters offshore clearly are direct federal responsibilities: Economic development, recreation, and conservation interests are shared by the federal government and the states."

In this respect, State management of the nation's coastal zone really means that states are the stewards of the Nation's coastal resources. Examples of national benefits from State coastal programs are numerous. Let me highlight some examples.

- **Hazard Reduction and Safety Improvements** - Contingency plans and public awareness, both the result of State programs, have resulted in saved lives and less property damage. By regulating development in coastal areas with severe storms in mind, and having evacuation plans in place before the storms happen, lives and dollars are saved. Through sound coastal development regulation and enforcement, disasters of national proportions can be averted when severe storms hit. How many federal dollars can be saved by limiting declarations of national disasters? With proper planning and regulation, less floodplain damages occurs, with the result of fewer federal dollars being paid out under the National Flood Insurance Act. Shorelines exposed to hurricanes in the Gulf, "northeasters" along the Atlantic, record high water levels in the Great Lakes, and the El Ninos on the Pacific coast require the careful regulation of new development provided by State CZM programs.

- **Ports and Waterfronts** - Revitalization of ports and urban waterfronts, which has happened across the nation in part through State CZM programs, has directly benefited the national economy. In fact, the ratio of federal CZM project dollars invested by states and local governments to that invested by public and private sources is often impressive. For example, $167,500 in CZMA monies has enabled South Carolina to develop the Folly Beach County Park. Open April through October, Folly Beach Park attracts some 120,000 people each season, 25% of which are tourists from outside the three-county base area. Revenue from entrance fees alone generates about $150,000 a year. Over the four years it has been open, $5,250,000 of direct private income has been derived from visitation. With over half a million people having visited Folly Beach Park since its inception, $21 million has been generated in the local community--all this resulting from an initial CZM grant of only $167,500, a ratio of 1:125. In addition, through the South Carolina Coastal Council, CZMA monies have inspired the Georgetown Waterfron Boardwalk project . The Coastal Council began with a base of $30,000 to assist in construction and design costs. Already in the two years of initial planning, the project has attracted 57 new businesses and generated 87 new jobs. This project has become a catalyst which has attracted more than $2 million in private investment to that area during the planning stages alone. Conservative estimates anticipate investments of $8-10 million dollars over the next five years. Federal dollars have thus contributed significantly toward economic expansion in the coastal zone. This is all a part of the country's economic recovery that the Administration is so proud of.

Revitalization of ports and urban waterfronts has had a positive impact on national security of the United States. For example, the Bath Iron Works Naval Shipyard in Maine was able to expand its Portland operations and position a massive floating drydock capable of submerging to a depth of 65 feet. Florida is developing a regulatory process through its CZM program that enables all of its ports to maintain proper channel depths and prevent silting. A state-of-the art Tidal Gauge System recently installed in New York Harbor will enable ships and barges in the harbor and along the Hudson River to increase cargo loads, reduce vessel layover time, and avoid accidents. All of these projects, possible because of appropriated CZM funding, serve to aid our merchant and naval ships in time of national emergency, directly benefiting the nation's security.

- **Fisheries and Wildlife** - Roughly 70% of all U.S. commercial fishing takes place in coastal waters. Further, an average of about 2/3 (and up to 98% in the Gulf Region) of commercially important fish species are dependent upon estuaries and coastal wetlands in their life cycle. Protection of these estuaries and wetlands, possible only with an effective coastal management program, may well do more to protect these stocks than any fishery management plan. For in order to need a fishery management plan, there must be fish, and in order for there to be fish, there must be wetlands and estuaries. Who can deny the national benefits of having living resources enhanced by local CZM plans? It is not difficult to understand how a fingerling in Maryland waters could mature in Virginia waters, be caught by a New England fisherman in the U.S. EEZ, and be sold at a New York fish market for someone in Kansas to eat.

State CZM programs also protect critical habitat for wildlife, water fowl and threatened and endangered species. In this manner State CZM programs directly complement other federal and international programs for protecting and managing migratory waterfowl, as well as reinforcing the Endangered Species Act.

- **Public Access** - Public access to the nation's coasts has improved significantly as a result of State coastal management efforts. Under the sponsorship of the CZMA, states have built bike paths, roads, fishing piers, waterfront parks and recreational facilities, open to all Americans, designed to increase public access to the coasts. Hawaii's beaches are not only for Hawaiians, nor are Florida's beaches only for Floridians, and so forth. Increasing public access by local coastal managers has served to greatly enrich all Americans.

- **Tourism** - By fostering sound resource management and development, CZM Programs promote tourism-- an increasingly important industry in our nation. Having better public access, cleaner, safer beaches and waterfronts, and special features like wildlife reserves and fisheries, well managed coasts attract larger numbers of tourists to coastal areas. What's more, benefits to the travel and tourist industries have a multiplier effect on coastal dependant industries as tourists who come to the coast enjoy local goods and services. Whether it be dining in a seafood restaurant or taking a fishing boat out to sea, tourism promotes coastal industries by attracting more people to experience the amenities of coastal environments. CZM programs encourage tourism and the cultivation of coastal industries—all important to the viability of our nation's economy and the quality of American life.

Paying The Coastal Zone Management Costs

Can the coastal states alone financially support the national CZM program?

Coastal states understand and readily appreciate both the President's and the Congress' desire to restrain federal speding. We are fully aware of the present federal budgetary situation. But we stand firmly opposed to balancing the federal budget at the expense of necessary and economically beneficial programs, such as coastal zone management.

Figures released recently by the National Governors' Association and the National Association of State Budget Officers indicate that several coastal states, eligible for CZMA grants, may have a budget surplus by the end of FY87. These figures have been relied upon to justify terminating federal spending on CZMA programs. But what these estimates don't reveal is that this projected surplus amounts to only 1.6% of the average coastal State 1987 general revenues, compared to 1.44% in 1986. 3.14% in 1985, and 4.65% in 1984. The trend is very much a declining one. Further, seven coastal states have projected ending balances of zero for FY87, and one has a significant projected deficit. For those coastal states that have projected surpluses, these figures do not reflect the fierce competition within states, due to substantial federal budget cuts, for whatever State funds are still available to help finance programs such as coastal management.

Further, emerging federal ocean activities proposed for 1988 will undoubtedly have major consequences for coastal states. Such activities include: the implementation of the Department of Interior's (DOI) new 5-year OCS oil and gas leasing plan, the Environmental Protection Agency's offshore incineration and ocean dumping programs and near coastal waters strategic plan, and NOAA's and DOI's studies to explore and develop the U.S. Exclusive Economic Zone.

The Administration's 5-year OCS oil and gas areawide leasing program continues to strain State capabilities to maintain their statutorily guaranteed role in the nation's OCS program. The ability of affected states to anticipate, prepare for, and mitigate the impacts from federally-initiated OCS oil and gas development will be taxed for years to come. The technical staff the states need to meet this demand are supported primarily by federal CZM funds. If federal funding support is not continued, staff layoffs would occur, ultimately leading to delays in processing time for coastal development permits, program reductions in permit monitoring and enforcement, and lengthy delays in CZMA federal consistency reviews. The resultant processing delays, particularly those pertaining to OCS exploration and development plans, would clearly cost the federal treasury more in lost revenues than could be saved by refusing coastal management grants to states. Worse yet, as technical staff are laid off in State CZM programs, negotiations over lease and permit conditions become less likely and costly litigation in federal courts becomes more likely in the face of disagreement. We must assert that termination of federal coastal management grants to states may be penny wise in the short term, but clearly is dollar foolish in the long run.

The Environmental Protection Agency is promulgating final regulations to permit the incineration of liquid hazardous wastes sometime in late 1988 or early 1989 off the shores of several coastal states. The EPA has also recently activated a new ocean dump site 106 miles off the coast of New Jersey for the disposal of municipal sludge. Moreover, the Clean Water Act amendments also place new and necessary requirements on State CZM programs in the development of comprehensive management plans for designated estuarine areas.

Further, the press of "normal" coastal business continues. The ever present shoreline development, coastal population growth, unforeseen natural hazards, harbor-port expansion and activity, dredge and fill operations, wetland conversion, recreation and tourism, fisheries utilization, and energy facility siting will only increase in the future. (See the "1987 CSO Budget Survey" attached).

Finally, the states are being asked to continue their role as the nation's stewards in the proper coordination and management of these often competing uses. This is a role the states readily accept, but without a reasonable level of CZMA funding support, coastal states will be unable to either meet their obligations under the CZMA or maintain their coastal programs.

States Desiring to Participate in the CZM Program

The Administration asserts that "all states desiring to participate in this program have submitted, and are implementing their plans," and thus further funding for CZM is not necessary. This assertion is not accurate. Today, 29 of the 35 coastal states and territories, covering 94% of the nation's coastline, have federally-approved CZM plans. Just six months ago, the Commonwealth of Virginia became the 29th. Currently, Ohio, where coastal legislation has been prepared with the support of Governor Celeste, is considering joining this national program. The promise of federal funding support was, and is, a major incentive for states to enter into, and remain in the business of managing the nation's coastal resources for the benefit of all U.S. residents. The door must not be shut on these remaining states and the remaining 6% of our nation's coastline.

Thus, Mr. Chairman and members of the Subcommittee, all of the Administration's public reasons for terminating this national program are not valid. The benefits are clearly national in scope, in addition to State and local benefits. Coastal State budgets alone cannot provide all the funding necessary to meet their national obligations under the CZMA, or even maintain their coastal programs. And not all states desiring to participate in the CZM program have yet submitted their plans for federal approval.

RECOMMENDED APPROPRIATIONS

FY88 funding for CZMA State/territorial grants would implement the State grant programs for the third year of the five year reauthorization. The question as to whether this national program is worthy of being funded has been answered. The question now is, "how much?"

Section 306 and 306A Grant Assistance

Over the last six years federal CZMA grant funding has been limited to maintaining existing federally-approved State CZM programs. An unfortunate result has been that states have been forced to redirect whatever Section 306 monies have been available towards the mere survival of core coastal programs. On top of this, the CZMA and federal regulations specify that states must spend 20 to 30 percent of their federally-appropriated Section 306 grants funds to fulfill certain significant improvement requirements, found in Section 303(2). This means that for every federal dollar a State receives for Section 306 programs, no more than 80 cents can be spent on the state's basic coastal program operations. Included within this 80 cents are expenditures to compile an inventory of nationally significant coastal resources, as required by Section 306(i).

Recognizing the extensive national benefits of Coastal Zone Management on the one hand, and the federal and State budget realities on the other, the CSO is dedicated to moving forward in a fiscally responsible manner. With this in mind, the CSO asks for what effectively amounts to level funding compared to FY87--$37.9 million for 306 and 306A grants. Member states of the CSO realize that in recommending this even level of federal CZMA funding for FY88, the coastal states must absorb a 56 per cent increase in its federal grant matching requirements, and the full cost of emerging federal ocean activities proposed for 1988.

Experience has shown that the full cost of national coastal management amounts to more than the sum of required State match and federal appropriations. To meet the full need of their coastal management programs, a number of states pay more than their required share. For example, in FY87, Connecticut appropriated $750 thousand although only $339 thousand was federally required. Likewise, Delaware appropriated $825 thousand when only $248 thousand was required, and Maryland spent $1.8 million when $857 thousand was required. But on balance, the CSO feels that a Section 306 and 306A appropriation of $37.9 million is reasonable in terms of both the importance of continuing the national CZM program, and the federal budget goals that this nation must meet.

Section 309 Grants

The CSO believes that the coastal states' interstate efforts to identify and resolve mutual coastal concerns deserve continued federal funding support. A good example is the tri-state effort of Florida, Mississippi and Alabama. These three states are cooperating to develop a tri-state hurricane evacuation plan. As that plan is nearing completion, the states are considering utilizing Section 309 funds to produce a hurricane loss study and contingency plan. This type of effort has been successful in a number of areas in Florida, and consists of assessing damage to public or private property, and developing plans to deal with the aftermath of a hurricane. Since Florida has completed a loss study, the first year's effort would be to conduct a loss study for Mississippi and Alabama, with Florida's advice and assistance. In the second year a contingency plan would be developed for Mississippi and Alabama, while addressing shortcomings in Florida's plans.

North Carolina and South Carolina are considering applying for Section 309 grants to coordinate their hurricane preparedness and evacuation programs. Both states are concerned with the impacts of hurricanes on their coasts. The Carolinas' ability to safely evacuate residents and the large number of tourists would be significantly enhanced by such a coordinated interstate program funded under Section 309.

The eight Great Lakes states have also initiated the first phase of the Great Lakes Regional Water Quantity Data Management Project. Under this project the eight states will pool thier data, in a common format, of water withdrawal, water return and consumptive use. Section 309 funding has been appropriated to fund the first stage of this project: identifying what data is collected, determining how to collect the data in a common format, and how to process it and easily retrieve it — all in a timely fashion. The second phase, impossible without continued Section 309 funding, is implementation of this project. Once implemented, this eight-state program will be coordinated with NOAA, the USGS, and the Canadian government. Without continued Section 309 funding, the nation's investment in phase one of this program will come to naught.

Other examples are available but we feel that the message is clear: Section 309 programs, conducted at the State level, have great national interests in terms of saving lives and property in addition to maximizing coastal management efforts by individual states. To continue these programs, the CSO requests the full authorized amount to be appropriated in FY88, $1.5 million.

Section 315 Grants

Under Section 315, the Secretary is authorized to make grants to coastal states for "acquiring, developing, or operating estuarine sanctuaries, to serve as natural laboratories," thus allowing scientific study of the effects of man's activities on coastal, estuarine environments. In the 1985 CZMA amendments, the

Estuarine Sanctuary System was renamed to the National Estuarine Reserve Research System. This name change serves to emphasize the research benefits of setting aside representative estuarine ecosystems suitable for long-term study.

With the assistance of federal grants under Section 315, 16 estuarine reserves have been officially designated, and two additional reserves have been proposed. The continuing availability of funds for the Section 315 grants program is vital to the continuation of State efforts underway to set aside estuarine areas as research reserves. For example, these grant funds supported acquisition of the Wells National Estuarine Reserve (Maine), which was purchased in 1984 and officially dedicated in August 1986. Florida has been using Section 315 grant money for acquisition in Apalachicola and Mercury Bays, and Oregon has sponsored educational walks to further public understanding of the estuarine environment at the South Slough Reserve.

In the coming year, Maryland will be nominating 5 sites representative of the Chesapeake Bay and western and eastern tributaries. Continued Section 315 funding will be needed to complete environmental impact statements at these sites, and for the development of site management plans, research, education and land acquisition programs pursuant to the establishment of new reserves.

CONCLUSION

The need for appropriating federal funds for the national CZM program cannot be overemphasized. We support and are committed to the national CZM program. In order for the coastal states to responsibly meet their stewardship obligations for the nation's coastal zone, adequate funding must go hand in hand with the federal government's commitment to extend the program until 1991. Continued federal financial support of State CZM programs is clearly justifiable for the following reasons:

- First and foremost, funding the CZMA program directly supports national objectives for resource protection, hazard area management, urban waterfront revitalization, public access and economic development.

- Second, most coastal states are financially unable to carry full responsibility for managing this nation's ocean and coastal resources.

- Third, not all states desiring to join the national CZM program have yet done so. The door must be kept open to these remaining states.

In sum, the Coastal States Organization strongly urges this Subcommittee to approve what is effectively level funding to coastal states for FY88. In the deliberations for CZMA reauthorization, the CSO supported reducing the authorized amount of grant funding to states as part of the five-year reauthorization. The figure determined to reasonably fulfill the CZMA requirements for FY88 was \$37.9 million for Section 306 and 306A grants, \$1.5 million for Section 309 grants, and \$3.3 million for Section 315 grants. We now recommend appropriating exactly that.

Coastal states have shown a willingness to accept their legitimate role as managers of this nation's ocean and coastal resources and to form a strong, viable partnership with the federal government. They must, however, have the continued financial ability to do so. The Coastal States Organization respectfully urges this Subcommittee to again take a leadership role in preserving these important national programs by adopting our recommended funding levels for State coastal management grants to maintain this partnership.

Thank you.

STATEMENT OF GORDON ROBERTSON, LEGISLATIVE COUNSEL, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Senator HOLLINGS. Mr. Robertson?

Mr. ROBERTSON. Thank you, Mr. Chairman. The association presents its views not merely from interest, but in representation of the state fish and wildlife agencies which are charged with a responsibility for fishery resources and working closely with the National Marine Fisheries Service to meet this Nation's marine fisheries management objectives.

The National Marine Fisheries Service's special proposal for fiscal year 1988 represents a 40-percent reduction over the fiscal year 1987 budget. This amounts to dismantling the world's finest marine fisheries agency. The Federal role in coordination and management of interstate and international fisheries is absolutely essential. It cannot be delegated to the States.

The administration is presently proposing to defray \$29 million in reductions by the institution of a Federal marine fishing license. The marine license, as proposed, is unrealistic and has no State agency, industry, or public support. This association strongly objects to the Federal marine fishing license proposal.

Senator HOLLINGS. Elaborate on that. Why is it unrealistic?

Mr. ROBERTSON. It is unrealistic because the area of licensing has strategically been the authority of State fish and wildlife agencies, and also because anglers are not ready to accept another additional fee for marine fishing. Several States have marine fishing fees now.

Senator HOLLINGS. Several states do? How many?

Mr. ROBERTSON. All of the Western States do, and I believe your State has a marine fee. Maryland does.

Senator HOLLINGS. We don't have one. If somebody walked out on one of those beaches, a little kid, and threw a line into the water, and they are going to lock him up because he doesn't have a license; is that right?

We don't have that. I mean, we have done some crazy things, but we haven't gone that far. [Laughter.]

It is unrealistic as I see it.

Mr. ROBERTSON. The association recommends the following as high priorities functions:

The Interjurisdictional Fisheries Act of 1986, which replaced the Commercial Fisheries Development Act should be fully funded at the $5 million level as authorized by the Congress.

Grants to States through the Anadromous Fish Conservation Act should be restored to the 1986 level of $3 million, including $500,000 for the Emergency Striped Bass Study.

The budget for the operations of the Regional Fisheries Management Council should be restored to the 1987 level of approximately $8 million.

The National Marine Fisheries Service habitat research and conservation programs should be maintained at 1987 levels, $14.9 million; and $5.3 million respectively.

The total allocation of Saltonstall-Kennedy funds to NMFS for fiscal year 1988 is proposed to offset reductions for the NMFS operation research and facilities account. This will eliminate the South Carolina grant program. The association recommends an $8 to $10 million grant program to address high priority industry research; development programs; generate industry matching moneys and to fulfill the user fee concept.

Mr. Chairman, the funding levels we are recommending are minimal and do not represent any program expansion. They are, however, necessary to ensure that essential productive habitat, research and survey programs are carried out to meet the needs of recreational and commercial fisheries of this Nation, as well as international treaty obligations.

Thanks for this opportunity, and we appreciate the support that this subcommittee has given in the past. I will be happy to answer any other questions.

Senator HOLLINGS. Your membership includes all 50 states?

Mr. ROBERTSON. Yes, sir.

Senator HOLLINGS. When you call it international, what other entities, countries or otherwise, are members?

Mr. ROBERTSON. The Province of Canada.

Senator HOLLINGS. Canada is a member of this?

Mr. ROBERTSON. Yes; the Canadian Wildlife Service in Canada; also the Federal Fisheries and Wildlife Agency in Mexico.

Senator HOLLINGS. Very good. Thank you all very much. We appreciate it.

[The prepared statement of Gordon C. Robertson follows:]

International Association of Fish and Wildlife Agencies

The International Association of Fish and Wildlife Agencies, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces and federal governments of the U.S., Canada and Mexico. All 50 states are members. The Association has been a key organization in the promotion of the principles of sound resource management and the strengthening of federal, state and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

NATIONAL MARINE FISHERIES SERVICE

The National Marine Fisheries Service (NMFS) $99.5 million budget for operative research and facilities represents a 40% reduction over the FY 87 budget (as compared to $162.3 million in FY 87). Personnel would be cut by approximately 300. This amounts to dismantling the world's finest marine fishery agency. The federal role in coordination and management of interstate and international fisheries is absolutely essential. It cannot be delegated to the states.

The Administration is presently proposing to defray $29 million of these cuts by the institution of a federal marine fishing license. The marine license, as proposed, is unrealistic and has no state agency, industry or public support. This Association strongly objects to the federal marine fishing license proposal.

Even with its current $162.3 million budget, NMFS is presently unable to fulfill its current obligations. This proposed reduction will threaten the survival of the agency and jeopardize the ability of NMFS to manage the Nation's marine fisheries. Oceans and fisheries programs would receive greater cuts than other NOAA and Department of Commerce activities, and the FY 1988 NMFS budget would be reduced substantially more than other federal resource management agencies. The Association finds no justification for the disproportionate cuts proposed for NMFS.

The Association believes that the highest priority functions of NMFS are research, data collection and management of interjurisdictional fishery resources. The Association recommends the following.

The Interjurisdictional Fisheries Act of 1986, which replaced the Commercial Fisheries and Development Act (PL 88-309), should be fully funded at the $5 million level as authorized by Congress. Projects funded through this program will provide much needed interjurisdictional fisheries information and commercial catch statistics to the Regional

Councils and interstate commissions. Presently many valuable migratory resources are in need of coordinated interjurisdictional management. This program, fully funded, will enable the councils and commissions to effectively monitor and develop regional fishery management plans.

Grants to states through the Anadromous Fish Conservation Act (PL 89-304) should be restored to the 1986 level of $3 million including $0.5 million for the Emergency Striped Bass Study (the 1988 Administration Budget is 0). This minimal level of funding of Anadromous Fish Grants is essential to continue annual monitoring and research on extremely valuable and man-impacted salmonid, striped bass, American shad and related river herring fisheries for which federal and state (interjurisdictional) conservation and management are basic to resource restoration and enhancement. Continual funding of the Emergency Striped Bass Program on the Atlantic Coast is essential to the completion of studies under way to reverse the precipitous decline of this economically important species.

The budget for the operations of the Regional Fishery Management Councils (established by PL 94-265) should be restored to the 1987 level of approximately $8 million (the Administration proposes a budget reduction of about 50% for the councils). If Council operational cuts are sustained, Councils which have produced management plans and manage all important fisheries in the Fishery Conservation Zone will be reduced to inoperative status. Councils must maintain their dynamic planning and monitoring functions, as envisioned in the Fishery Conservation and Management Act, if domestic commercial and recreational fisheries are to flourish. Many important species are still in need of fishery management plans and many existing plans are in need of revision.

The Marine Recreational Fisheries Statistics Program should be retained. Many fishery management plans cover fisheries with major recreational as well as commercial components. Such fisheries cannot be managed on commercial landings data alone. The Administration's proposal to cancel this program would eliminate the only recreational estimates that are available to NMFS and the Councils. Presently many states are developing their own recreational statistics programs. However, in many cases the state programs use and depend on the NMFS program to provide baseline information which then is enhanced by further state data collection. Until better approaches are developed and implemented, this program must be retained.

We strongly oppose termination of Federal support for the Columbia River mitigation hatcheries. An adequate alternative funding mechanism has not been implemented, and a halt in hatchery production from 24 salmon hatcheries would jeopardize major fisheries, be counter to U.S./Canada Pacific Salmon Treaty commitments and break the original agreements for their installation with the effected states.

NMFS habitat research and conservation programs should be maintained at 1987 levels--$14.9 million and $5.3 million respectively (the 1988 budget proposes a crippling reduction of $8.7 million for habitat research and $2.3 million for habitat conservation). Productive habitat is absolutely essential. Habitat research, environmental management activities, habitat conservation analyses, associated mitigation work and a high level of cooperation with Corps of Engineers and other agencies must be a high priority for restoration. The NMFS Habitat Policy initiatives and responsibilities should be sustained by the budget.

Resource Information, Analysis and Dissemination. The ability of NMFS to perform its necessary research and management functions and to disseminate the relevant information to the public and private sectors must be maintained if the many responsibilities mandated by Congress are to be carried out at a useful and effective level. Among these mandates the IAFWA considers the NMFS research and statistical support to the Fishery Management Councils to be paramount.

The total allocation of Saltonstall-Kennedy funds to NMFS for FY 88 is estimated at $57.4 million. All of it is proposed to offset reductions for the NMFS operation, Research and Facilities Account, which would eliminate the S-K grant program~~, to the states~~. The Association recommends an $8-10 million ~~state~~ grant program to address high priority industry research, development program, generate industry matching monies, and fulfill the user fee concept.

Special concern is called to the Administration's proposed closure or reductions of staff in many important NMFS research facilities. The work of the fisheries councils and state management programs have always been inhibited by the inadequacy of fisheries statistics and stock assessment estimates. The NMFS laboratories presently constitute a valuable national resource of technological expertise, equipment, and facilities that deal with an array of fisheries resource management and other marine ecological problems. The proposed cuts to the laboratories would virtually eliminate these capabilities. Also, an important part of the support for the councils and commissions depends on full funding of such programs as MARFIN, PACFIN and SEAMAP. Other mandates requiring research support by NMFS are the Endangered Species Program, the Marine Mammals Protection Act, the U.S./Canada Pacific Salmon Treaty and other international treaty obligations.

Senator HOLLINGS. We will continue comments on NOAA. Let's hear from Mr. Bruce Manheim, followed by Kathryn Tollerton; Dr. Judith Weis, and John Quadros.

STATEMENT OF BRUCE S. MANHEIM, JR., SCIENTIST, WILDLIFE PROGRAM, ENVIRONMENTAL DEFENSE FUND

Senator HOLLINGS. Mr. Manheim?

Mr. MANHEIM. Thank you, Mr. Chairman. My name is Bruce S. Manheim. I am a scientist with the Environmental Defense Fund here in Washington. I appreciate the opportunity to testify before you today. I propose to testify essentially about two subjects: One is to urge the subcommittee to approve an appropriation of approximately $4 million to support NOAA's new Antarctic marine living resources program; and secondly, I would like to just mention or recommend or urge the subcommittee to oppose any efforts to include in the fiscal year 1988 appropriation bill language that would bar NOAA from implementing or enforcing regulations under the Endangered Species Act that are designed to reduce the drowning of endangered sea turtles in the shrimp fishery.

I will take up the Antarctic Marine Living Resources Program issue first. Over the past 20 years, as coastal nations have closed their fishing zones to countries formerly dependent upon those fishing zones have turned to the waters surrounding Antarctica for its rich marine resources. During the early 1970's, commercial fishing of Antarctic finfish began, and by the mid-seventies, several nations had launched operations to harvest krill, the tiny shrimp-like crustacea that form the basis of the Antarctic food chain.

Most recently, the Soviet Union embarked on a commercial operation in southern waters to address the impacts that these sorts of commercial harvesting activities can have on marine life. The Convention on the Conservation of Marine Living Resources was adopted in 1980 and was reenforced in 1982. To date, 21 nations, including the major fishing nations and the Soviet Union and Japan, have agreed to subject their fishing activities to regulation under that convention. To provide——

Senator HOLLINGS. Are the Soviets included in that?

Mr. MANHEIM. Pardon me?

Senator HOLLINGS. Are the Soviets included in that?

Mr. MANHEIM. Yes, sir; the Soviet Union, Japan, Poland, and East Germany are the principal fishing countries in Antarctica.

Senator HOLLINGS. How about Korea? Are they down there?

Mr. MANHEIM. Not yet, but they have acceded to the convention, and we anticipate they will be entering fishing efforts there soon.

To provide a scientific basis for regulation under this convention and to fulfill U.S. obligations under the convention, Congress, in 1984, directed NOAA to establish its Antarctica Marine Resources program. By 1986, late 1986, a plan for this program had been developed, and NOAA's scientists had actually embarked on a research cruise in Antarctic waters for the first time.

That 90-day cruise, which is only made possible by a congressional appropriation of $2 million in fiscal year 1987, generated rather startling information about the impacts that commercial fishing activities have had on marine life.

It is that information that will be critical to fishing for stronger conservation measures under the convention later this year.

Senator HOLLINGS. Is anyone else down there engaged in research?

Mr. MANHEIM. The fishing nations are, but historically, they have been extremely reluctant to release their data for fear that that data would result in measures restricting the harvesting activities.

Senator HOLLINGS. But they are engaged in the research; we just don't learn the results.

Mr. MANHEIM. Yes. Yes; in fact, it has been quite difficult to get information out of them. It has been a real struggle.

Let me just mention two of the observations that were made by NOAA this past year. They found that commercial fishing for finfish has been so significant that at least one of the stocks have been so heavily fished that it was only one-tenth of its size in 1986 as opposed to what it was in 1982.

So in just 5 years, it dropped a magnitude of 10. Another rather startling observation that the NOAA researchers made was to find that Krill, which is the organism that is really the basis of the Antarctic food web, were only one-third as abundant in certain heavily fished waters of Antarctica as they were in 1981.

Senator HOLLINGS. One-fifth?

Mr. MANHEIM. One-third.

Senator HOLLINGS. One-third.

Mr. MANHEIM. So they decreased two-thirds since 1981 in one heavily fished part of Antarctica. Krill occur in these very large superswarms, and the superswarms are located so that the vessels can simply run their trawls through and pick them out at will.

This year, unfortunately, the administration has not asked for any money for this program; $4 million is required to charter a vessel and put scientists down there for 180 days. We urge the subcommittee to approve such an appropriation.

Let me just briefly mention one other thing

Senator HOLLINGS. Tell me about the turtles. I thought we put that off until September. That was in the supplemental.

Mr. MANHEIM. There is language in the supplemental the 1987 supplemental, but we anticipate efforts to include similar language in the fiscal year 1988 appropriations bill.

Senator HOLLINGS. Is there any dialog or negotiations going on between the environmentalists' plans and the fishermen themselves working together on it?

Mr. MANHEIM. As you may know, there was a process of mediation that went on for several months and culminated in regulations that were generally agreeable to the environmental community and to the fishing community. Those regulations were relatively recently opposed by NOAA, and even though they have not yet been promulgated, efforts have already been made to withdraw funding for implementation of those regulations.

Senator HOLLINGS. What degree of approval would you say you have for fishermen on those proposed regulations?

Mr. MANHEIM. I personally wasn't part of the negotiating effort, but a colleague of mine was, and generally, there was widespread support in the fishing community for these things. There is, I think, I believe, a Louisiana fisherman, representatives of the Louisiana shrimpers, who have been principally concerned. In fact, they refuse to sign off on an agreement they already agreed to as part of this mediation process.

In any event, our view is that this issue should not be dealt with as part of the appropriations process; that NOAA should be given a chance to promulgate these regulations and that if Congress is to consider this issue, it should be the subject matter jurisdiction of the House Merchant Marine and Fisheries Committee, which is currently considering amendments to the Endangered Species Act.

Senator HOLLINGS. Let me tell you how distorted this whole thing gets. We have under the Constitution the function of the U.S. Senate to ratify treaties. Rather than ratifying treaties, we are up there on the appropriations and authorization bills trying to put riders on that you would obey a certain version of a treaty and everything else.

That is why I am running back and forth upstairs right now. We just are not orderly or constitutional, necessarily. You all will have to excuse me. You concluded, I take it?

Mr. MANHEIM. Yes, I have.

Senator HOLLINGS. Thank you very much.

[The prepared statement of Bruce S. Manheim follows:]

ENVIRONMENTAL DEFENSE FUND

STATEMENT OF

THE

AMERICAN CETACEAN SOCIETY
CENTER FOR ENVIRONMENTAL EDUCATION
CETACEAN SOCIETY INTERNATIONAL
DEFENDERS OF WILDLIFE
ENVIRONMENTAL DEFENSE FUND
ENVIRONMENTAL POLICY INSTITUTE
GREENPEACE USA
INTERNATIONAL FUND FOR ANIMAL WELFARE
NATIONAL AUDUBON SOCIETY
OCEANIC SOCIETY
SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION
THE HUMANE SOCIETY OF THE UNITED STATES

PRESENTED BY BRUCE S. MANHEIM, JR.
SCIENTIST, WILDLIFE PROGRAM
ENVIRONMENTAL DEFENSE FUND

Mr. Chairman and Members of the Subcommittee:

My name is Bruce Manheim[1] and I am a scientist with the Wildlife Program of the Environmental Defense Fund. Thank you for the opportunity to testify today on the Fiscal Year 1988 budget for the National Oceanic and Atmospheric Administration (NOAA). This statement urges this Subcommittee to approve an appropriation of approximately $4 million to support NOAA's directed scientific research program in Antarctica. Although that effort is vital to U.S. interests in Antarctica, the Administration is unfortunately not seeking any funding for it in its FY 88 budget request. In addition, we urge this Subcommittee to oppose any effort to include in the Fiscal Year 1988 appropriations bill language that would bar NOAA from implementing or enforcing regulations under the Endangered Species Act designed to reduce the drowning of sea turtles in the shrimp fishery.

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1. Member of the Antarctic Section of the Department of State Advisory Committee on Oceans and International Environmental Scientific Affairs; Non-governmental representative on the U.S. delegation to the Convention on the Conservation of Antarctic Marine Living Resources, 1984-1986.

The Antarctic Marine Living Resources Program

Over the past twenty years, as coastal nations have closed their fishing zones to foreign fleets, countries formerly dependent on those zones have turned to the waters surrounding Antarctica for its rich marine resources. During the early 1970's, commercial harvesting of Antarctic finfish began. By the latter part of that decade, several nations had launched commercial harvesting operations for krill -- the one to two inch shrimp-like crustacea that form the basis of the Antarctic food chain and are the principal component in the diets of Antarctic whales, seals, and penguins. Most recently, with the collapse of the squid fishery near the Falkland Islands and the loss of thousands of rockhopper penguins, Britain expanded its fishing limits around those islands. As a result of that action, it is now likely that fishing nations will look to Antarctic waters for a potential squid fishery.

In anticipation of the very serious impacts that commercial fishing could have on the Antarctic food chain, the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) was adopted in 1980 and entered into force in 1982. To date, 21 nations, including the major fishing nations in the Southern Ocean -- the Soviet Union and Japan -- have agreed to subject their fishing activities to regulation under the Convention.[2/] Specifically, the Convention established an advisory Scientific Committee and a regulatory Commission with authority to impose a variety of restrictive measures on commercial fishing operations. Because the Convention requires consensus decision-making, however, measures to prevent over-exploitation will be adopted only if they are supported by persuasive scientific information. To provide a scientific basis for such regulation, Congress directed NOAA in

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2. Members of CCAMLR include Argentina, Australia, Belgium, Brazil, Chile, European Economic Community, Federal Republic of Germany, France, German Democratic Republic, India, Japan, Korea, New Zealand, Norway, Poland, South Africa, Soviet Union, Spain, Sweden, United Kingdom, United States, and Uruguay.

1984 to design and conduct a comprehensive program of scientific research of marine living resources in Antarctica.[3] By late 1986, that plan had been completed and NOAA scientists had embarked on their first research cruise in Antarctic waters. That 90 day cruise, which was made possible by a Congressional appropriation of $2 million for FY 87, generated extremely important information about the impacts that fishing operations have had on Antarctic marine life.

For example, before the NOAA cruise this year, the precise status of certain Antarctic fish stocks was not well-known because the fishing nations have generally been reluctant to release data that would allow scientists from non-fishing nations to evaluate these populations. As a result, the Commission has thus far been unable to agree to any measures to protect the Antarctic icefish and the cod-like Gunther's Notothenia, which are harvested in substantial amounts each year. Indeed, essentially all we knew was that the commercial catch of these species had increased from approximately 35,000 tons in the 1972-73 season to a peak of more than 350,000 tons in the 1977-78 season and then catches dropped sharply to less than 60,000 tons during the 1985-86 season.[4] Nevertheless, the fishing nations may no longer be in a position to argue that scientific information does not support restrictive conservation measures. The NOAA research cruise demonstrated that certain of these fish stocks had been so heavily fished that at least one is currently only one tenth of its size in 1982. That information will support forceful arguments for stronger conservation measures by the United States at the forthcoming CCAMLR meeting later this year.

In addition, the NOAA cruise found that krill were only one third as

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3. Antarctic Marine Living Resources Convention Act of 1984, Pub. Law 98-623, 16 U.S.C Secs. 2431-2444.

4. Reported catches (in metric tons) of fish in the Antarctic for the period 1972 through 1986 were as follows: 72/73 - 35,280; 73/74 - 50,781; 74/75 - 72,858; 75/76 - 57,965; 76/77 - 135,477; 77/78 - 355,648; 78/79 - 125,093; 79/80 - 117,066; 80/81 - 123,761; 81/82 - 124,395; 82/83 - 197,522; 83/84 - 70,083; 84/85 - 72,750; 85/86 - 58,227.

abundant in heavily fished waters near Elephant Island north of the Antarctic Peninsula. That absence of krill may have been caused at least in part by commercial fishing operations in the area in 1981. Because krill often occur in huge superswarms spanning several kilometers, they are relatively easy to harvest when located. In 1981, 47 factory trawlers homed in on a superswarm of krill in the Elephant Island area and fished that population for several weeks. While very low concentrations of krill in the area reportedly resulted in smaller populations of krill-dependent seals and penguins in the area, no measures have yet been adopted under CCAMLR to monitor and restrict the commercial krill harvest. Again, that inaction ultimately stems from the paucity of scientific information available about the status of krill. Again, the U.S. research results will expedite the adoption of appropriate measures to ensure that the commercial krill harvest does not have serious impacts on Antarctic marine life. Indeed, in light of recent technological advances by the fishing nations in locating and processing krill, we may not be able to wait much longer for such information. Last year, more than 450,000 tons of krill were taken from Antarctic waters -- the second highest commercial catch ever.[5/]

In this context, we must emphasize that continued funding of this NOAA research program is absolutely essential. Indeed, the results described above are simply snapshots of a dynamic phenomenon that can only be understood through continuous, periodic scientific sampling of particular Antarctic species. For FY 88, approximately $4 million will be needed to extend NOAA's Antarctic Marine Living Resources program. Almost half of those funds would be used for a 180-day charter of an ice-strengthened vessel to serve as a research platform, while the remaining monies would support continued assessments of depleted fish stock populations and monitoring of the commercial krill harvest. In addition, these funds could be used to place U.S. observers and, inspectors on board fishing vessels to ensure compliance

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5. Reported catches (in metric tons) of krill in the Antarctic for the period 1972 through 1986 were as follows: 72/73 - 59; 73/74 - 19,785; 74/75 - 44,029; 75/76 - 5,635; 76/77 - 91,516; 77/78 - 132,349; 78/79 - 333,128; 79/80 - 447,023; 80/81 - 448,132; 81/82 - 528,201; 82/83 - 228,643; 83/84 - 128,218; 84/85 - 191,460; 85/86 - 466,445.

with the Convention. On the other hand, in the absence of funding of this directed research program, the major fishing nations in the Southern Ocean will play the lead role in dictating the nature and extent of their fishing activities in the waters off Antarctica and the United States will continue to fall seriously behind these countries in directed Antarctic marine research.[6]

In addition to reducing the ability of the United States to argue persuasively for measures that protect Antarctic marine life, failure to fund the Antarctic Marine Living Resources program will have at least three other adverse consequences. First, the U.S. may not be able to determine whether energy exploitation in Antarctica will have serious impacts on marine life. Over the past decade, there has been significant international interest in Antarctica's petroleum potential. An agreement is currently being negotiated to control oil and gas exploitation, but like CCAMLR its effective enforcement will depend heavily on available scientific information. While NOAA's proposed research program is principally concerned with conservation of marine living resources, it is clear that information generated by the program would allow the United States to play a key role in scientific decisions regarding the environmental impacts of oil and gas exploitation on marine life in Antarctica.

Second, U.S. scientific research, the currency of political dominance in Antarctica, will continue to decline. A 1985 State Department study indicates that while other countries have stepped up their Antarctic marine research activities, the U.S. effort has actually decreased. Our scientific capabilities and contributions -- and, consequently, our political influence over Antarctic matters -- will decline further as several countries, including Brazil, India and the People's Republic of China, expand their newly established Antarctic scientific programs. In the absence of adequate funding

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6. A National Marine Fisheries Service study identified the contribution to implementation of CCAMLR in U.S. dollars for these countries: Federal Republic of Germany ($4.4 million), Japan ($5 million), and the Soviet Union ($6.1 million).

of this NOAA research program, U.S. political and security interests in and influence over Antarctic activities will continue to diminish.[7]

Finally, and perhaps most fundamentally, the failure of the United States to fulfill its obligations under CCAMLR will reflect poorly on the U.S. commitment to the Antarctic Treaty system -- the collection of agreements that grew out of international scientific cooperation and today governs activities on the icy continent and its surrounding waters. That system is now being questioned by the larger international community as the United Nations determines whether it should be revised or replaced. There is no doubt that the United Nations will evaluate the efficacy of CCAMLR to determine whether it is actually being implemented by its member countries. Although the U.S. has been a strong advocate of the treaty system for the past 25 years, its voice of support will ring hollow if it cannot fulfill its obligations under CCAMLR.

While we recognize that you must make difficult budget decisions, we believe that you should not overlook the importance and cost-effectiveness of NOAA's Antarctic marine research program. Clearly, a modest amount of money invested today in Antarctic marine research will go a long way toward addressing critical environmental and political issues the United States will inevitably face in antarctica. Indeed, for future generations, funding of this program will surely be more important than the modest savings we may gain today through its elimination. For that reason, we respectfully request this

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7. U.S. political and security interests in Antarctica identified by the State Department include: (1) reservation of Antarctica for activities that serve peaceful purposes only; (2) prevention of Antarctica from becoming the scene or object of international discord; (3) continuation of the peaceful and cooperative relationships regarding Antarctica among those states active there; (4) continuation of the demilitarized and nuclear-free status of Antarctica, including the ban on testing of weapons and provision of full on-site inspection rights guaranteed by the Antarctic Treaty; (5) preservation of U.S. access to all areas of Antarctica and surrounding marine areas for peaceful purposes; and conversely, prevention of such access being denied the U.S. or its nationals on the basis of territorial claims or otherwise; and (6) preservation of any basis for a U.S. claim to territorial sovereignty in Antarctica which existed prior to the entry into force of the Antarctic Treaty. Testimony of R. Tucker Scully, State Department, before the Subcommittee on Science, Technology and Space, Senate Committee on Commerce, Science and Transportation, September 24, 1984.

Subcommittee to approve an appropriation of $4 million to support NOAA's Antarctic Marine Living Resources program.

Regulations to Protect Threatened and Endangered Sea Turtles

In addition, we urge the Subcommittee to reject any effort to include in the Fiscal Year 1988 appropriations bill language that would bar NOAA from implementing or enforcing regulations under the Endangered Species Act designed to reduce the drowning of sea turtles in the shrimp fishery. In March of this year, NOAA proposed regulations to protect threatened and endangered turtles by requiring parts of the American shrimp fleet to phase in the use of new turtle-protecting gear (similar in concept to the porpoise-protecting gear that has successfully reduced porpoise drownings in the American tuna fishery) in certain areas during certain months critical to the survival of these species. NOAA is expected to promulgate a final rule by early June.

Even before the opportunity for public comment on those proposed regulations had ended, the House included in it Fiscal Year 1987 supplemental appropriations bill a measure barring NOAA from implementing or enforcing them in the western Gulf of Mexico. The proponents of that action are expected to seek similar language in the Fiscal Year 1988 appropriations bill. We strongly urge the Subcommittee to reject any such efforts for the following reasons:

(1) the appropriate place to resolve any dispute about the wisdom of the proposed regulations is in the congressional committee with subject matter jurisdiction over the Endangered Species Act, the House Committee on Merchant Marine and Fisheries, which is currently considering several bills to amend that Act;

(2) even if it were appropriate to address the issue in the context of appropriations legislation, it is highly irregular and objectionable to do so before NOAA has had an opportunity to complete its rulemaking and to make

such changes or adjustments in its final rule as the public comments received on the proposed rule may warrant; and

(3) the problem that NOAA is attempting to address with its proposed rule is an urgent and important one affecting the survival prospects of five species of threatened and endangered turtles that occur along our Gulf and Atlantic coasts; stripping NOAA of the means to address that problem will constitute a conspicuous abandonment of the commitment that Congress has made, and that the American people overwhelmingly support, for the protection of endangered species.

That concludes my testimony. I appreciate the opportunity to testify today and I would be happy to answer any questions that you may have.

STATEMENT OF KATHRYN R. TOLLERTON, WASHINGTON REPRESENTATIVE FOR MARINE SAANCTUARIES, DEFENDERS OF WILDLIFE

Senator HOLLINGS. Now we have Ms. Tollerton.

Ms. TOLLERTON. Thank you, Senator. I am Kathryn Tollerton. I am speaking today for Defenders of Wildlife, my own organization, as well as 167 other organizations, including the one Bruce Manheim works for, in talking about several issues in the NOAA budget.

We are extremely appreciative of your long-time, strong support for restoration of the programs that we are about to request funding for. This has been extremely important over the last several years, and we thank you, again, for your support.

First, I want to talk about the entanglemen program, which is a program in NOAA that has started bringing the present administration to the marine gear entanglement program. There is currently, in fiscal year 1987, an appropriation of $750,000 which we would like to see increased in the coming year to $1 million. That is the figure, in fact, which it started in 3 fiscal years ago.

In this program, you are dealing with all of the classic debris, the nets that are difficult to see in the ocean that strangle whales; get into stomachs of sea birds and turtles and other marine life, and the office is out in Seattle.

It is run by a man named Jim Coe, who works with the Marine Fisheries Service. He has done an excellent job doing an education program which has resulted in seminars in this country and abroad on the problems of plastic pollution; what the fishing industry and the people can do to lessen the impact of the debris; and they have also been exploring other technologies and the use of new technologies to get plastics to biodegrade more quickly.

We feel that more work is needed considering the MARPOL convention probably will be before you soon in the Senate, and eventually, this is supposed to lead to the requirement that there be no offshore and off-ship disposal of debris. The problem now is that when you, even if you save your garbage and your can, your plastic materials until you come into port, many ports don't have facilities unless there is incineration or some other source to dispose of the debris.

We feel more money is needed for these programs; more money is needed also to look into the various kinds of plastic technologies that are needed; and further work needs to be done on retrieval of fishing gear.

Beyond that, dealing with endangered species, we are particularly interested in the recovery plans that you have supported and initiated for the humpbacked whale. This past year, we are requesting $50,000 to move into the recovery phase of that. I am pleased to say that the Marine Fisheries Commission is even now requesting a board of scientists to serve on the recovery team and to be able to develop a plan over the next year.

In addition to that, we also support the implementation of the regulations on the turtle excluder device rather than having a rider on the fiscal year 1988 appropriation. We feel there, frankly, that if more research is needed to see exactly how many turtles there are in the western and in shorewaters of the Gulf of Mexico, that it is best to do that research at the same time that the turtle excluder devices are required.

One population of those turtles is down something like 540 females. They are endangered, and research could provide a lot of useful material. At the same time, if the research is not done immediately, or if research is done without putting the turtle excluder device into effect, then you can't protect the turtles.

We also ask for continued funding for the endangered gulf California Harbor porpoise, which is also in the early stages of a recovery plan with the National Marine and Fisheries Service.

Finally, we would ask for some increases in the marine sanctary program to provide management for the Fagatele Bay Marine Sanctuary, which does not have onsite management to deal with improved management, enforcement and educational activities that are needed there, and to anticipate the same kind of activities needed for the coming Cordell Bank and Flower Garden Banks.

Finally, we would ask for an increase in research on the National Marine Research Program.

TURTLE EXCLUDER DEVICE

Senator HOLLINGS. On the net itself, I thought there was a complaint. Is it too expensive? It is unworkable?

Ms. TOLLERTON. You mean the turtle excluder device?

Senator HOLLINGS. Yes; the turtle excluder device. What is the big complaint?

Ms. TOLLERTON. As we understand it, in part, a major complaint is that fishermen have used certain kinds of fishing gear for a long time, and they are very reluctant to change. There has been some voluntary use of it by about 1 percent of the shrimp trawlers, and many of them have found that it simply does reduce the amount of fish and reduces the loads of nonshrimp that they have, and, again, it doesn't seem to hurt them.

Financially, many of them are concerned that they feel they can't afford it although the device is $200 to $400, would range in price from $200 to $400.

Senator HOLLINGS. $200 to $400..

Ms. TOLLERTON. The estimate we have from the Center on Environmental Education is that it would only cost or would represent about 1 percent of the operating costs of the shrimp vessel for the year. There are a number of, at least four, types that we approve now, and the regulations provide for the testing and development of further types of devices.

Senator HOLLINGS. Very good.

[The prepared statement of Kathryn Tollerton follows:]

PREPARED STATEMENT OF KATHRYN R. TOLLERTON

WASHINGTON REPRESENTATIVE FOR MARINE SANCTUARIES
DEFENDERS OF WILDLIFE

ON BEHALF OF

Defenders of Wildlife
American Society for the Prevention of Cruelty to Animals
Animal Protection Institute
Center for Environmental Education
The Cetacean Society
The Cetacean Society International
The Environmental Defense Fund
The Fund for Animals
Greenpeace U.S.A.
The Humane Society of the United States
The International Wildlife Coalition
Massachusetts Society for the Prevention of Cruelty to Animals
The National Audubon Society
The Oceanic Society
The Sierra Club Wildlife Committee
The Society for Animal Protective Legislation
and
The Whale Center

Mr. Chairman and Members of the Subcommittee:

Thank you very much for the opportunity to testify on the Fiscal Year 1988 (FY88) budget requests for the National Estuarine Reserve Research System, the National Marine Sanctuary Program, the Protected and Endangered Species activities, and the Gear and Debris Entanglement Program of the National Oceanic and Atmospheric Administration (NOAA). I am testifying on behalf of Defenders of Wildlife, the American Society for the Prevention of Cruelty to Animals, the Animal Protection Institute, the Cetacean Society, the Cetacean Society International, the Center for Environmental Education, the Environmental Defense Fund, the Fund for Animals, Greenpeace U.S.A., the Humane Society of the United States, the International Wildlife Coalition, the Massachusetts Society for the Prevention of Cruelty to Animals, the National Audubon Society, the Oceanic Society, the Sierra Club Wildlife Committee, the Society for Animal Protective Legislation, and the Whale Center. Our millions of members and supporters have a strong interest in the preservation and protection of our coastal and marine resources, in the protection of endangered and threatened species, and in achieving a major reduction in gear and debris entanglement of marine mammals, birds, and fish.

At the outset, we want to express our appreciation to all the Members of this Committee for their decisions to restore and enhance NOAA programs in the FY87 Commerce Appropriations Law. We particularly thank you for the marine sanctuary program funding, for the $750,000 for the fishery gear entanglement program, and for initiating a recovery plan for the humpback whale. We believe it is in the national interest to improve and strengthen these and other NOAA programs.

Coastal Zone Management

National Estuarine Reserve Research System
(formerly the National Estuarine Sanctuary System)

Mr. Chairman, we are requesting $3,359,000 for the National Estuarine Reserve Research System in FY88. This is $2,100,000 more than the FY87 Administration request of $1,259,000, and a $500,000 increase above the FY87 appropriation of $2,859,000.

We are requesting an increase of $500,000 for the research budget to bring it up to $1 million. The 1986 amendments to the National Estuarine Research Reserve Program emphasize the research and educational use of the estuarine reserves and require NOAA to give priority to supporting or conducting estuarine research that uses the estuarine reserves. Currently the agency receives about $2 million annually in estuarine research proposals for this program. A budget of $1 million would provide approximately $60,000 per research reserve for research on water and sediment management, the behavior of nutrients and other chemicals in the reserves, estuarine productivity and fishery habitat. The estuarine research reserves operate as natural laboratories to provide information to assist coastal management decision-makers in solving coastal management problems. This research would be greatly assisted by the increased funding we request.

If the $1,600,000 reduction from the FY87 the Administration requests were made, acquisition of new estuarine reserve sites would be slowed down and would increase in cost. Acquisition and operations would be cut at some sites, and opportunities to use proposed sites for estuarine research would be lost. The costs of waterfront property go up continually. Stretching site acquisition costs over several years increases the risk that willing sellers would turn to other purchasers, and the opportunity to preserve valuable estuarine areas for education, recreation, and research would be lost.

This program, which is Section 315 of the Coastal Zone Management Act, was renamed the National Estuarine Reserve Research System in PL99-272. The estuarine reserve research program is a federal-state partnership. The federal government bears only half the cost of acquiring the state-managed sites. Seventeen estuarine reserves have been designated in 15 states.

National Marine Sanctuary Program

Turning to the Marine Sanctuary Program, for Fiscal Year 1988 we request $3,396,000 for the program. This is $1,200,000 more than the Administration request of $2,196,000, and an increase of $600,000 above the FY87 appropriation of $2,796,000. To date seven ocean and coastal water areas have been designated National Marine Sanctuaries (NMS), and two more sites may be approved during the current Fiscal Year. The new sites are: (1) Cordell Bank, an approximately 20-square-mile area off the northern California coast, which has a series of extensive undersea ridges and narrow pinnacles on the edge of the continental shelf and is a feeding area for marine species ranging from the endangered brown pelican to the endangered humpback whale; and (2) Flower Garden Banks, located in the Gulf of Mexico, approximately 110 nautical miles southeast of Galveston, TX, which contains a terrace formation and the northern most living coral reefs on the continental shelf. The $2,796,000 appropriated last year is needed to continue the existing management, education, research, and enforcement activities at six of the seven designated sanctuaries and to continue developing management documents for a future site -- Norfolk Canyon, a submarine canyon located 60 nautical miles off the coast of Virginia, which contains huge tree corals and areas along the canyon walls where large invertebrates and some finfish dig caves and burrows.

However, an increase of $600,000 is needed in FY88 to provide for management and research activities at the Fagatele Bay National Marine Sanctuary, American Samoa, which was designated in 1985 and has no on-site staff, and the two sanctuaries which are proposed for designation this year or next -- Cordell Bank and Flower Garden Banks.

A strong interpretation program -- educating visitors about the sanctuary's natural features and marine inhabitants -- is essential to the protection of the sanctuary and to better public appreciation of man's impact upon the marine environment. A solid research program that charts the movement of whales or sharks within the sanctuary, for example, is essential to the development of good management practices, to the interpretation program and to the scientific understanding of the sanctuary's marine resources. Through the interpretation and research programs, visitors learn the reasons for banning such activities as spearfishing, bottom dragging, using wire fishtraps, and bilge pumping in the sanctuary.

The estuarine and marine sanctuary programs are unique, the first of their kind in the world. We believe that the value of these programs far exceeds their small cost. It is very much in our national interest to preserve both species and environments to which we as fellow creatures are intimately related in the seamless web of life.

National Marine Fisheries Service

The President proposes substantial cuts in resource information and management, including work on protected species and ecosystems of particular concern, such as the Chesapeake Bay. Such cuts will result in a failure to carry out the policies enunciated by Congress in the Marine Mammal Protection Act, the Endangered Species Act, and other statutes. It also will undercut efforts of state and local governments and private organizations to cooperatively protect these species and these special ecosystems, such as the Bay, and it will make future recovery much more expensive.

Marine Fishery Resource Programs

Information Collection and Analysis

Resource Information

The Administration proposes to cut $38,454,000 and many Full Time Equivalents' (FTEs) positions from the Resource Information account in FY88. We recommend restorations including, but not limited to, those outlined below. We also recommend that the Committee instruct the Department to preserve or add personnel in specific instances.

The $1,275,000 for protected species research should be restored. This money funds turtle population assessment, efforts to reduce the inicidental take of sea turtles, and research on bowhead whales and Hawaiian monk seals.

In regard to the installation of Trawler Efficiency Devices, also known as Turtle Exclusion Devices (TEDs), on shrimp trawlers to prevent their catching and retaining endangered sea turtles in their nets, we recommend an increase of $1 million in the share of Saltonstall Kennedy (SK) Act funds to be provided to fishery authorities in the Southeastern U.S. This increase would provide for testing and development of additional varieties of such devices as are contemplated by NOAA's proposed regulations and for educating shrimp fishermen to their use. A portion of these funds might also be used for a one-time matching grant to help purchase TEDs for those who agree to provide reports to NMFS on the results of their use. The attached article on TEDs in the January/February 1987 issue of DEFENDERS explains the need for these devices. Furthermore, the sponsors of this testimony are opposed to the inclusion in this or any other appropriation bill of language which would limit the applicability of regulations requiring the use of Turtle Excluder Devices (TEDs).

Out of these protected species research monies, NOAA should utilize $50,000 to continue the development and implementation of the recovery plan for the Gulf of California harbor porpoise. This plan is being initiated at Congress's direction for the world's smallest and rarest cetacean. While encouraging reports of sightings continue, so do the threats to this endangered porpoise in the Sea of Cortez. The initial recovery work has revealed the areas which these porpoises most often appear to inhabit. Some successful breeding is occurring, but no recovery work has been initiated beyond the initial studies.

Recovery actions that are essential before full implementation of a recovery plan can be undertaken include: completing population and mortality surveys, addressing such issues as population recruitment and trends that threaten the porpoise; assessing and introducing alternatives to gill net fishing methods such as purse seine nets, excluder devices, depth and location regulation; and education and enforcement of U.S. and Mexican laws against taking and trade in totoaba, a prime prey species of the porpoise. An article in the May/June 1987 issue of DEFENDERS on the Gulf of California harbor porpoise, commonly referred to as the vaquita, is attached to this testimony. It is very important that NMFS develop a research and action timetable and assign responsibilities for recovery work.

Further restorations should include:

The $1.5 million in Chesapeake Bay Studies -- for habitat research in the Bay and the assessment of the impact of habitat quality on striped bass, oysters, and other species.

The $1.5 million for marine mammal research - this represents an unjustified cut of 47% of the Marine Mammal Laboratory budget in Seattle and the cutting of dolphin research in the Gulf of Mexico and the waters off the southern states and well as cuts in research on species in the Northeast.

An enhancement of $50,000 for the development and initial implementation of a recovery plan for the humpback whale should also be provided:

The humpback whale is one of the rarest great whales and resides within U.S. waters the greatest amount of time. For these reasons, the United States has the opportunity to act constructively to recover the humpback and to set a positive example for world-wide whale conservation. The first step in protection is writing a recovery plan for the species. The 1982 amendments to the Endangered Species Act direct that the Secretary give priority in developing plans to species that may be in conflict with construction or other forms of economic activity.

Defenders recommends that $50,000 be appropriated for NMFS Protected Species research to prepare a recovery plan for the North Atlantic and North Pacific populations of humpback whales.

As in the case of the Gulf of California harbor porpoise, we recommend that NMFS develop a research and action timetable and assign responsibilities for recovery work.

We recommend restoring the $500,000 for research on the right whale, one of the most endangered of large whales. Key portions of inshore habitat are being considered for waste dumping and hydrocarbon extraction. Continued research will help avoid jeopardizing the whales and enhance their recovery.

We recommend a restoration of the $750,000 and an enhancement of $250,000 (**$1.0 million total**) to build upon much needed work done in FY85, 86, and 87 on gear entanglement and plastic pollution problems. We are providing the committee with copies of an article in the May/June 1987 issue of DEFENDERS which discusses the current NMFS gear and debris entanglement program and graphically illustrates the need to continue this important program.

The take of protected marine wildlife species continues practically unabated. Research must be continued to develop solutions to the problem of continuing sea-bird, fur seal, whale, turtle, and other mortality caused by driftnets, nearshore set gillnets, abandoned packaging, and other plastic debris. Techniques for marking gear and packaging that is likely to be lost, discarded, or abandoned must be further assessed and implemented, where appropriate. The Service should also conduct further research and develop, implement and vigorously enforce regulations which will reduce plastic pollution. These regulations and programs should include provisions for fines or assessments against those whose unreported marked or numbered nets are found adrift but unreported which have contributed to the taking of protected species. These should provide an immediate incentive for reducing the current threats posed by such nets and gear. We recommend that NMFS be encouraged to work with the U.S. Fish and Wildlife Service and the Environmental Protection Agency (EPA) in this effort.

The Service should also continue to pursue research on and development of the legal basis for and practical techniques for reducing take on the high seas and addressing abandonment of nets, gear, and plastic waste by foreign nations. One means of accomplishing this is through international conventions (at least one relevant convention appendix, Annex V of the International Convention for the Prevention of Pollution by Garbage from Ships [MARPOL], is currently under consideration in the Senate).

For FY88 we recommend an increase of $250,000 to deal with such problems as: (1) assessment of the ability of ports to manage offshore disposal of plastic ship wastes, (2) work related to controlling the lifetime of plastics; and (3) development of techniques to reduce the loss of fishing nets and to develop techniques to protect marine life.

In regard to management of the onshore disposal of plastic wastes from ships in port, Annex V of MARPOL and several associated bills in Congress would require onshore disposal of these wastes soon after such legislation becomes law. Little review has been made of the knowledge or technologies available for the safe disposal of these wastes through compactors, recycling, safe landfills (i.e., those which do not attract hungry eagles, other birds, bears, or other wildlife to eat and/or to become entangled in plastic debris). Onshore port disposal methods vary greatly and will have to be examined on a case-by-case basis. The problems are different, for example, between New York City and the very small but heavily used port at Dutch Harbor, Alaska. Appropriate waste disposal technologies will have to be examined, recommended and install at these and other U.S. ports.

Moreover, additional data is needed on the technologies for controlling the lifetime of plastics. Although work is progressing on photodegradability (particularly on those plastics which sink), research on chemodegradability is still in the infancy stage.

In regard to the loss and retrieval of fishing gear, recent research has shown the destructive impacts of nets on northern fur seals, seabirds, and other animals. In particular, NMFS has conducted onshore research on the impact of fishing gear on the northern fur seal. Now research must be conducted on the causes of mortality on fur seals at sea. And finally, time and money must also be spent to increase public and waste management industry awareness that ship-generated waste disposal is an enormous global problem and is closely related to finding solutions for the disposal of land based waste.

Protected Species Management

The Office of Protected Species is and has been severely underfunded. An enhancement of $600,000 is in order along with an additional 9 FTEs. Of this, $350,000 and 4 FTEs, including an invertebrate zoologist below the level of office director, should be used to begin developing: (1) a list of marine candidate species that may require listing in the near future and (2) a process

for identifying such candidates on a more regular basis. NMFS has never generated internally a proposal for listing an endangered species though a number of such listings have been warranted.

Of this sum, $250,000 and 5 FTEs should be provided to improve anti-entanglement management and enforcement. This appropriation could provide additional staff for each coast, Hawaii, and Alaska.

Habitat Conservation

The proposed reduction of $2,269,000 should be restored so that the environmental impact analysis, mitigation, and conservation work can continue.

This concludes our testimony. Thank you again for your strong and continuing support for these programs and for your attention and consideration today. I will be glad to try to answer any questions you may have.

DEFENDERS—Jan/Feb 87

TEDS:

SALVATION FOR SEA TURTLES?

Whether an ingenious device will halt captures in shrimp nets depends on acceptance by reluctant fishermen

by Michael Weber

SEA TURTLES are diverse in behavior, appearance and dietary preferences—but they have one critical feature in common. Their numbers are dwindling, in some cases drastically.

Although attempts have been made for over a decade to halt turtle hunting and egg poaching, until recently no action was being taken to address the fact that more than 12,000 turtles are drowning every year in the nets of shrimp fishermen who trawl the waters from North Carolina to Texas.

Efforts to halt the accidental capture of these seafaring reptiles with an innovative and effective piece of equipment nicknamed the TED began in 1982. But when sea turtle biologists brought the good news to tradition-bound shrimpers, expectations of cooperation turned into frustration, controversy and the threat of confrontation.

The National Marine Fisheries Service has begun efforts to break this impasse, but the campaign to rescue endangered and threatened sea turtle populations by mandatory use of the TED is certain to be stormy.

Probably the most significant factor in population loss has been hunting for local consumption and for international trade. The meat of the green sea turtle, for instance, is considered a delicacy. But although these turtles were once abundant off Florida's coast, they were virtually fished out by 1900. The population is listed as endangered under the Endangered Species Act along with Kemp's ridley, hawksbill and leatherback sea turtles. Loggerhead sea turtles are listed as threatened under the act. Olive ridleys are listed as threatened except off the Pacific coast of Mexico, where they are considered endangered.

Although the law prohibits the capture, injury or consumption of endangered species, on some southern Atlantic beaches every nest of sea turtles is poached. Eggs become an ingredient in Florida poundcake or are sold to bars in this country and Mexico, to be consumed floating in a mug of beer by men who fancy that this concoction will enhance their virility. Tortoise shell jewelry and boots of sea turtle leather are manufactured on Caribbean islands and in South America and sold there and illegally in Florida and Texas. Because of the many people passing through customs, and because of the shortage of customs inspectors, such smuggling seldom is detected.

Other sea turtle problems are also hardly touched by the Endangered Species Act. In southeastern Florida, prime nesting beach for sea turtles is also prime habitat for developers. In some cases hotel and condominium construction has eroded beaches, completely wiping out nesting areas. Lights from buildings and from highways facing on nesting beaches discourage nesting females from coming ashore and laying their eggs. Thousands of hatchlings are so badly disoriented by lights after they emerge from their nests that they wander away from the ocean and are killed on highways or die in the heat of the sun. Large beach-cleaning equipment may destroy turtle nests. Explosives used in removing offshore oil rigs have been killing turtles in the Gulf of Mexico. Grown turtles often choke to death after swallowing seaborne trash that they have mistaken for food.

And just offshore, so close at times that you might think you can hear the winches drawing up the nets, there are trawlers both large and small scouring the sea bottom for shrimp and also catching billions of pounds of other marine life. Every year the shrimp fleet in the Gulf of Mexico alone inadvertently nets some 1.5 billion pounds of finfish, approximately ten pounds for every pound of shrimp. An estimated 90 percent of these fish are discarded. According to the Center for Environmental Education in Washington, Gulf shrimpers catch and discard five times the amount of groundfish caught by commercial groundfishermen. The Gulf of Mexico Fishery Management Council repeatedly has cited the need to reduce this accidental catch if commercial groundfishermen are to make a living.

Southeastern shrimp fishermen also catch as many as 45,000 sea turtles annually, principally loggerheads, according to estimates by the Commerce Department's National Marine Fisheries Service (NMFS). Some 12,600 of these sea turtles drown every year along the southeastern coastline, an estimated 5,500 of them in the Gulf of Mexico. Fishermen who capture endangered sea turtles such as Kemp's ridleys and greens are violating the Endangered Species Act. If a fisherman catches a threatened loggerhead, he is supposed to revive it, if necessary, before returning it to the water away from active shrimp fishing.

The shrimp harvest in coastal waters from North Carolina to Texas is the nation's most valuable fishery. Last year some 15,000 commercial shrimpers pulling 20,000 to 30,000 nets caught about 290 million pounds of shrimp for which processors paid approximately $450 million.

Shrimpers inevitably catch sea turtles in their trawls since shrimp and turtles like the same muddy waters. And once startled by an approaching dragnet, a sea turtle does not swim out of the way but tries to outdistance the trawl. Determined as its attempt to escape may be, it soon tires and is caught up in the net.

Until recent years, incidental capture of sea turtles was not seen as a major problem. "When turtle populations were big and shrimp fleets and boats were smaller, their inroads were probably not demographically significant," says Archie Carr of the University of Florida, widely considered the dean of sea turtle scientists. The situation changed, however, with the decline of sea turtle populations and the growth of the shrimp fleet and its harvesting capacity. The problem has continued to grow. Today a number of sea turtle populations are declining toward oblivion.

In 1973, Peter C. H. Pritchard and René Marquez, two of the sea turtle scientists most knowledgeable about the endangered Kemp's ridley, concluded in a review of the status of the species that "probably the most serious problem of all . . . and the hardest to control is the accidental capture and drowning of ridleys in shrimp trawls."

The Kemp's ridley is the smallest and rarest of the sea turtles. At an adult weight of 80 pounds, it is dwarfed by the leatherback, which regularly breaks 800 pounds. It is the only species that nests during the day, making it especially vulnerable. One of its last few huge nesting aggregations on the Gulf Coast of Mexico—a gathering of more than 40,000 female ridleys—was photographed in 1947 when the seeds of this species' catastrophic decline had already been sown.

As the ridleys dwindled, Mexican marines in 1966 began protecting nests from poachers. In 1978, agencies of the United States government joined the effort. Hatchlings were released into the Gulf of Mexico, and NMFS initiated a research program at its Galveston, Texas, laboratory. Unfortunately, these efforts have not halted the decline of nesting populations. Jack Woody, national sea turtle coordinator for the U.S. Fish and Wildlife Service, estimates that no more than 520 adult female ridleys still survive.

Soon after the shrimping season began in the summer of 1980, record numbers of dead turtles washed ashore along the coasts of the southeastern states. An atmosphere of tension hung over an emergency meeting of government officials and representatives of the fishing industry and the environmental community called in response to this crisis. The issue threatened to evolve into a controversy as bitter as that of the early 1970s when protests were raised against the incidental killing of tens of thousands of porpoises by tuna fishermen. It was at this meeting that the government introduced a piece of gear that seemed to offer a solution acceptable to all parties. Called the Turtle Excluder Device, it was quickly dubbed the TED.

NMFS had been looking since 1978 for a device that would aid in the recovery of endangered species of sea turtles without disruption of the shrimping industry. After several false starts, researchers John Watson and Wilbur Seidel began testing early designs of the TED. Based partly on devices already used by some shrimpers, the TED reduced sea turtle capture by 97 percent while increasing the shrimp catch by seven percent. If shrimp boats from North Carolina to Texas would use TEDs, the number of sea turtles captured each year in the southeastern shrimp fishery would drop from 45,000 to about 1,500 and none would be drowned, according to government figures. Other sea life would go free as well.

The cage-like TED fits into the neck of a shrimp net. When an object such as a jellyfish, large finfish or sea turtle encounters the TED, it is guided up and out of the net by slanting bars that lead to a trap door. A funnel of webbing accelerates the water flow past the bars, ensuring that the shrimp continue to the back of the net, where a shrimp fisherman wants them. In early tests the TED also reduced the capture of sharks, rays and sponges.

In a public-relations move, the acronym TED was re-translated. The Turtle Excluder Device was now referred to as the Trawling Efficiency Device in the hope that fishermen who would not use the TED to save sea turtles might employ it to fish more efficiently.

When some fishermen argued that the TED was dangerous because it was bulky and weighed nearly 100 pounds, NMFS researchers reduced its weight to 37 pounds and made it collapsible. After further modifications, the TED was found to be capable of reducing the number of small finfish caught in shrimp trawls by 50 to 70 percent. Vessels need two to four to equip their nets at $400 each, yet the outlay still would be less than one percent of a vessel's operating cost over the two-year life of the TED.

The device seemed too good for fishermen to pass up. Not only would it save nontarget sea life. It would also save valuable time spent picking through the catch for shrimp, and the shrimp would be less damaged and thus fetch a higher price. Because culling time was reduced, the TED would enable fishermen to get their catch on ice faster, making for a fresher product at the market.

William Varnum, captain of a shrimp boat in Holden Beach, North Carolina, who had installed the device, told University of North Carolina Sea Grant officials, "It catches less trash fish, so I can drag as long as I want. Without it I could only tow for about two hours before I had to empty the nets. It cuts down on culling time and hired hands. I went from four hired hands to two. I'm glad they came up with something like this."

The TED unquestionably was a technological solution to a very urgent problem. Reflecting the contagious optimism of the time, in 1982 a TED Voluntary Use Committee was formed by conservationists and industry representatives. Its goal was to reduce sea turtle drowning in the shrimp fishery, primarily through voluntary use of the TED. In 1983 the group set a goal of 50 percent use of the TED by last November.

Hoping for a nonregulatory solution, NMFS at first took the lead in promoting the economic incentives offered by the TED. Ronald Reagan had just entered the White House with an agenda of lightening the regulatory burden on business, and NMFS wanted to avoid a confrontation with the fishing industry. Conservationists, for their part, saw the TED as a way to avoid yet another conflict that might weaken the nation's already fragile commitment to endangered species conservation.

At the TED Voluntary Use Committee's meeting in November, 1985, in New Orleans, participants from environmental organizations were deeply discouraged. Although the TED had been enthusiastically accepted in a number of foreign countries, American shrimpers had not responded to the promotional efforts of federal agencies and conservationists. NMFS representatives reported that more than 1,000 shrimp boats in Indonesia, for example, were using TEDs. Yet in this country, where hundreds of thousands of dollars of government and other funds had been spent on promoting the device, fewer than one percent of the Southeast's shrimpers were using them at any given time. During the three and a half years of the Voluntary Use Committee's existence, only 300 TEDs had been installed in a fleet of more than 15,000 shrimping boats equipped with more than 20,000 nets. Even those shrimpers given free TEDs used them only when they encountered large concentrations of jellyfish that otherwise would have filled their nets.

What was the problem American fishermen were having in accepting the proven advantages of using the device? Charles Lyles, representing a Louisiana shrimpers' association, had a ready explanation. "Shrimp fishermen are using nets that have evolved since 1950, and they are accustomed to fishing in a particular way," he said. "It's hard to change. Take the example of cigarettes. The Surgeon General says they are bad for you, but people continue to smoke. So, even if it's good for them, change comes hard for fishermen."

Perhaps the only optimist at the final TED Voluntary Use Association meeting was NMFS Southeast Regional Director Jack Brawner, who spoke of balancing the economic well-being of the industry with survival prospects for the sea turtles and said that what was needed was a quantum leap in TED technology transfer. Predicting considerable progress in the next year, he said he was prepared to commit hundreds of thousands of dollars in endangered-species funds to everything from attitudinal surveys to more TED giveaways to ensure this added use.

Sally Murphy, co-leader of the Southeastern Sea Turtle Recovery Team, a group appointed by the Department of Commerce and composed principally of sea turtle biologists, reported the team's opinion that NMFS should begin to prepare regulations requiring use of the TED and should include enforcement methods.

Representing industry, Ralph Rayburn of the Texas Shrimp Association said his association did not have funds available for an increased effort. "We are literally facing the make-or-break point of the industry in the coming years, and we are not in a position to be taking even the slightest bit of financial risk," he declared.

Since this meeting of the Voluntary Use Committee, the federal agencies have moved toward mandating the TED's use. Late in 1985 FWS decided the loss of Kemp's ridleys in shrimp trawls had to end. The agency presented NMFS with a formal recommendation to make use of the TED by the Gulf and Atlantic inshore and offshore shrimp fleet mandatory beginning next March. NMFS rejected the recommendation. Last January, FWS approached the Gulf of Mexico Fishery Management Council, a quasi-governmental committee responsible for managing fisheries in federal waters. "The Kemp's ridley does not have the luxury of time and cannot surmount this human-caused mortality, along with the host of natural and other factors constantly working against the species' survival," FWS's Jack Woody told the council. "This is one case where an identified problem can be solved," he added.

It quickly became clear that the council did not want to take responsibility for requiring the TED. There was a general feeling that as long as NMFS and FWS had responsibility for protecting sea turtles under the Endangered Species Act, the council would do best to stay out of the controversy sure to develop.

Last August the Center for Environmental Education notified the Commerce Department that it intended to file suit under the Endangered Species Act unless the department required the use of TEDs in shrimp nets by this year. Soon afterward, Anthony Calio, administrator of NMFS' parent agency, the National Oceanic and Atmospheric Administration, persuaded representatives of the industry and the conservation community to participate in a final series of meetings, assisted by a mediator.

Although the Environmental Protection Agency has sponsored similar negotiated rulemaking, NMFS has never before used this approach in developing regulations. By the end of November, three meetings had led to tentative agreements. Whether or not a comprehensive agreement on phasing in TED use is reached, Calio has pledged to proceed this year with some TED requirements. At this writing, regulations were expected to be issued in January. They will be subjected to public hearings.

The focus on Kemp's ridleys disturbs some sea turtle conservationists who believe that the TED should be used to help all declining turtle species. Others oppose requiring use of the TED in some areas and not in others because they predict serious enforcement problems. Some enthusiastic promoters of the TED remain firmly opposed to mandatory use. David Harrington of the Georgia Sea Grant College Program has operated one of the most successful programs of TED promotion. He fears that mandating use of the TED will simply make the shrimper view the sea turtle as an enemy.

Resistance of fishermen to accepting the device remains high. The individual boat captain, who may find only one or two turtles a year in his nets, is unwilling to recognize that there is, in fact, a problem.

Margaret Ambrose of Rockville, South Carolina, who works a shrimp boat with her husband George, reflects the ambivalence of shrimpers who have used the TED and learned at first-hand what it has to offer. Earlier, she recalls, she and her husband "fought the TED and we were totally against it. We even wrote Washington." Today the Ambroses feel differently. They have had experience with the device and have found that it increases their catch. "We have drug TEDs, and at times we were glad we had them on," she says. But she opposes mandatory use and rises to the defense of shrimpers when this subject is discussed. She feels that turtle biologists have unfairly accused shrimpers of killing turtles they find in their nets. "I'm not saying no shrimpers butcher turtles, but very few do," she declares. "We do not want to catch turtles; they can clog nets up. . . . Environmentalists have to understand we are not out there trying to hurt the environment. We need to protect the sea; it is our livelihood."

At issue now are where and when TEDs will be used and whether the Kemp's ridley and other hard-pressed sea turtles can survive further delay. □

Michael Weber works on marine conservation issues at the Center for Environmental Education in Washington, D.C. He was co-chairman of the TED Voluntary Use Committee.

How You Can Help Save Sea Turtles

HELP WIN federal regulations designed to save endangered sea turtles from death in shrimp nets. Write in favor of requiring shrimp fishermen to use the TED (Turtle Excluder Device) to:

Anthony Calio, Administrator
National Oceanic and Atmospheric Administration
Department of Commerce
Washington, DC 20235

Send a copy of any response to:

Neil Gordon
Activist Coordinator
Defenders of Wildlife
1244 Nineteenth Street, N.W.
Washington, DC 20036

DEFENDERS—May/Jun 87

CAN THE VAQUITA BE SAVED?

The answer will depend partly on whether Mexico stops the gillnet fishing now victimizing the species

by Gregory Silber

IT WAS ALMOST as if we were looking for a mythical animal. We'd been chugging around in a 25-foot Boston whaler searching the northern waters of the Gulf of California for six weeks and we'd seen only two. It was almost time to go back home, and we were pretty discouraged.

Not that it wasn't an exciting place. The long days we spent searching for the porpoise were filled with observations of other marine life. Bat rays, ten or 12 in a school, often followed our boat, swimming just below the surface. We saw lots of bottlenose and common dolphins, California sea lions, a few fin whales, even a gray whale, and thousands of birds—boobies, pelicans, storm petrels and gulls. There was a lot of human activity too, and we were interested in the effects of the various kinds of fishing on the gulf ecosystem. But I'd come down to do field studies of vaquitas.

And then it happened! During the last three days we came on more of these porpoises than the total sighted over three decades.

The Gulf of California harbor porpoise, commonly known as the vaquita, was first identified by scientists a mere 31 years ago. The vaquita is obscure partly because it lives only in the Gulf of California in Mexico. Although no one knows what its population was in earlier days, scientists agree that because of fishing practices that led to accidental entanglement in nets, its numbers probably were greatly reduced by the time it was discovered.

Jay Barlow of the National Marine Fisheries Service is one of the biologists studying the vaquita. He recently issued a report that pointed out the many holes in our knowledge to be filled before a recovery plan can be developed. "To begin with, we don't have any idea whether there are 30, 100 or 1,000 vaquitas left," he says. "We have to learn more about the species population, distribution and relative abundance."

That's what I had set out to do when I went down to the Gulf of California last year. This spring I'll be visiting the southern as well as the northern gulf. In coming years I plan to return to determine changes in seasonal abundance.

No one questions that the major factor in the decline of the vaquitas has been and continues to be the totoaba fishery. Although no sightings of live vaquitas were documented between 1980 and my 1986 visit, in 1985 Alejandro Robles of the Instituto Tecnológico y de Estudios Superiores de Monterrey recovered 13 dead vaquitas from gillnets (some of which had been set for sharks). This year three more bodies have been recovered, and researchers believe at least four other vaquitas were killed and discarded before they could be collected.

Because the totoaba is also endangered, the fishery is now outlawed, but a number of factors are keeping it alive. With little money available, the ban is generally unenforced. Meanwhile, there is a ready market for totoabas, and hard-pressed Mexican fishermen have little incentive to stop the gillnetting. " 'If I don't fish illegally, then my neighbor will,' is the prevailing attitude," says Alejandro Robles, who is very concerned about the plight of the vaquita and works closely with the fishermen in his totoaba research.

According to Dr. Bernardo Villa of the Universidad Nacional Autónoma de México, the largest market for totoabas is San Diego. Although the United States has banned totoaba imports, once the totoaba has been cleaned and prepared for sale the customs inspectors have difficulty distinguishing it from other sea bass. And a ban against marketing the fish in Mexico is completely ignored, says Villa.

While fishermen may be aware that the gulf's resources are dwindling, they are unlikely to change their methods of their own accord, and gillnet fishing apparently yields more fish for each hour and peso spent than other methods. "The fishermen are poor," says Robles. "Fishing is their livelihood. Their attitude is one of immediacy. They say, 'As a fisherman I don't know about tomorrow. I have to eat today and earn money today—how can I worry about tomorrow when surviving today is a problem?' "

"The whole economy there is so desperate, it creates this kind of pressure where people are out there trying to survive," Dr. Kenneth Norris of the University of California, Santa Cruz, says. "Anyone who's going to pump money into a vaquita protection scheme has got to take that economic pressure into account."

Yet Villa and Norris agree that the totoaba fishery cannot continue if the vaquita is to survive. A growing gillnet fishery for sharks also must be monitored carefully. Villa hopes the market for the totoaba can somehow be shut down and that by making fishermen aware of the vaquita's status, he can discourage them from gillnetting and enlist their cooperation in his studies.

This spring, with almost no money available for the vaquita, Villa and Robles are concentrating on educating fishermen and asking their cooperation by placing posters in public buildings in the fishing towns at the north end of the gulf, San Felipe, Puerto Peñasco and El Golfo de Santa Clara. So someone in Villa's research group can collect carcasses for study, posters ask fishermen to free any accidentally caught live vaquitas and to keep and report any dead ones. Efforts also are being made to educate high school students about the significance of the incidental kill of vaquitas in totoaba nets. Porpoises usually drown within ten minutes after being caught in the nets.

In addition to gillnetting, investigators are concerned about the problem of habitat degradation. The Colorado River once flowed freely into the upper Gulf of California, bringing with it a rich load of nutrients that nurtured the gulf's food chain. Extensive damming and diversion for power and irrigation have radically slowed the flow. The resulting productivity loss may have affected the vaquitas' food supply. According to biologist Barlow, in its most extreme form such a loss could cause starvation or increase the porpoise's disease susceptibility. The reduced food supply may have slowed the porpoises' reproductive rate. Barlow is also concerned about the possibility of PCB loading in the water supply from north of the border and DDT in the runoff from Mexican farms just below.

"Pesticides may be one threat to their survival. Scientists are now examining the blubber of dead vaquitas to determine the pesticide levels in their tissues," he says.

Meaningful progress in saving the vaquita from extinction will depend crucially on cooperation between the United States and Mexican governments. Experiments with alternative fishing gear do not seem promising, and many biologists believe that the only way the remnant vaquita population can be saved will be to establish a marine refuge, with compensation given to fishermen to help them develop other means of making a living. Enforcement measures would have to be initiated in both countries to ensure that no totoabas are imported into the United States and that all fishing stops.

Devising and carrying out a successful recovery plan will require both drawing on the knowledge of the local fishermen and maintaining close cooperation between Mexican and American biologists. Even if there is rapid progress in developing a plan, it will be at least a decade before its results can be evaluated, according to Barlow, who estimates maximum population growth of ten percent a year. "But if we can control mortality, there's reason for optimism," he asserts. "Elephant seals were thought to be extinct at the turn of the century. Then a small group was spotted on Guadalupe Island off the Baja Peninsula. Fishing was stopped, and the species recovered on its own. There were six known births in 1911 and 25,000 pups born in 1982."

Defenders of Wildlife took the initiative in proposing the vaquita for the endangered species list in 1978, an effort that finally succeeded seven years later. Defenders also publicized the porpoise's decline by placing it on its "top ten" endangered species list in 1984 and was successful in having $50,000 earmarked in the National Marine Fisheries Service's 1986 budget to begin recovery planning.

Another helpful role in the vaquita preservation effort has been played by Dr. Robert L. Brownell, Jr., marine mammalogist with the U.S. Fish and Wildlife Service, who has recovered some of the porpoise specimens on the gulf's beaches and has researched other recovery records.

Jay Barlow's study and report identifying research needs was the first step toward a management plan for this rare and intriguing cetacean. With luck, a plan soon will be in effect and the vaquita will be saved. ☐

Gregory Silber is a founding member of the West Coast Whale Research Foundation. His vaquita research is being supported by The Nature Conservancy's international program and the Center for Environmental Education.

DEFENDERS—May/Jun 87

The TRASHY Sea Around Us

A disgraceful plastic tide is fouling the oceans—and killing marine animals. The cleanup has barely begun.

by William H. MacKenzie

THE BROAD, sandy beaches of the Oregon coast are a magnet for visitors from all over the country. There you can feel the soft sea foam gently wash your feet in the sand, observe delicate marine life in the haven of a tidal pool, dig for clams, watch graceful pelicans glide near the surface of a bay and luxuriate in the solitude.

And you can watch as each incoming tide brings in a new crop of plastic debris.

Last September, a beach cleanup in Oregon attracted hundreds of volunteers who picked up more than 14 tons of litter that had found its way to shore. Included were chunks of styrofoam larger than baseballs, bands used for strapping boxes, plastic bottles and other containers, six-pack yokes, pieces of synthetic fishing gear, plastic bags and sheets and plastic eating utensils.

Similar artifacts of 20th century civilization wash up onto beaches around the world every day of the year. But much more floats far from shore on the sea's surface or suspended and unseen in the ocean depths, or sinks to the ocean floor.

Some people pay no attention, accepting the plastic tide as part of the landscape. Others get annoyed, but see it mainly as an esthetic irritant. Then there's Jim Coe. He gets angry. "Sometimes I get so intense about it I feel like I ought to go out and get a black hat and a skinny tie and act like I'm on a mission from God," he says. "The whole thing has turned into a crusade of sorts, to try to make people more aware of the consequences of all this persistent debris for the marine environment."

Coe is in a better position than most people to carry out his crusade. Since 1985 he's been manager of the Marine Entanglement Research Program of the National Marine Fisheries Service (NMFS). I talked with him in his office overlooking Lake Washington on the east side of Seattle. The building is right in the middle of a wildlife preserve, and the view from his window of geese, ducks, pheasants and even an occasional coyote helps ease the tensions of his job. Coe is no stranger to environmental controversies. In 1971, when he went to work for NMFS in La Jolla, California, he found himself in the midst of a furor over the killing of tens of thousands of porpoises in tuna nets in the Pacific. He first ran an observer program to monitor the tuna fishing operations and later headed the team that designed net modifications and procedures to reduce the toll.

In 1985, after marine scientists established that net fragments and other plastics were killing large numbers of fur seals in Alaska's Pribilof Islands, NMFS set up an entanglement office and asked Coe to head it. He says the dedicated efforts of John Twiss, executive director of the Marine Mammal Commission, were crucial to getting an appropriation from Congress. "The other person who deserves an enormous amount of credit," Coe says, "is Nancy Wallace, who mobilized the environmental community and organized the Entanglement Network. The energy she generated helped focus the public—and congressional—eye on what scientists were learning about harm to wildlife."

With a budget of less than $1 million annually, Coe is overseeing a two-pronged program. One focus is research on the sources, types, distribution and impacts of marine debris, particularly plastics and other long-lasting materials. This part of the program also involves looking at what to do about the problem, including examining technologies to deal with waste generated on vessels at sea and identifying ways to reduce the hazard of persistent waste materials before they enter the marine environment, such as developing plastics that break down in a controlled period or encouraging the use of alternative materials that are less persistent or hazardous.

The second component of Coe's program is public education—making people aware of the extent of the problem and what they can do about it. This is being carried out both at home and in international forums. The international effort already has resulted in seminars in Japan, Taiwan and South Korea.

Coe has no delusions about the scope of the task ahead of him. Researchers have reported bottles, plastic sheeting and styrofoam cups even on the remote beaches of the Beaufort Sea off arctic Alaska. A plastic Godzilla toy recently was found on a beach on the small island of Laysan 1,000 miles northwest of Honolulu—along with disposable lighters and plastic pellets, the raw material for manufactured products.

The world's merchant fleets alone dump an estimated 450,000 plastic, 4.8 million metal and 300,000 glass containers into the sea every day, along with many thousands of plastic eating utensils, ropes and cargo-strapping bands. Carmen Blondin, a deputy assistant administrator of the National Oceanic and Atmospheric Administration (NOAA), told members of the House Subcommittee on Coast Guard and Navigation at a 1986 hearing that the world's commercial fishing vessels lose or discard up to 135,000 tons of plastic fishing gear each year. Fishing boats have been estimated to be the source of another 340,000 tons of waste annually, including more than 23,000 tons of plastic packaging materials.

Recreational boaters and beach vacationers add their share. The U.S. Coast Guard has estimated that they jettison a pound and a half of trash per person per day into the nation's coastal waters. Los Angeles beachgoers alone are reported to leave behind 75 tons of trash every week. Some of it is collected by cleanup crews, but much is claimed by the tides.

The sheer volume of plastic waste defies any accurate reckoning, but unquestionably it is overwhelming. Ironically, it includes some trash we believe we have disposed of safely. An estimated 9 million tons a year of solid waste generated in the United States end up being dumped at sea, and about 700,000 tons of this are plastic. More is discharged from sewage treatment plants, and combined storm and sanitary sewer systems carry trash to the sea during heavy rainstorms. More is swept seaward from land-based disposal sites along coastal waterways.

Whatever the grand total, it surely is rising steeply. Al Pruter, a specialist in plastics at Natural Resources Consultants of Seattle, says, "With the constant increase in production and use of plastics, it wouldn't surprise me if our annual crop of plastic waste has tripled over the last ten years."

With so much plastic in the marine environment, as in our daily lives, it can be hard to remember how short a time these synthetic materials have been with us. Only in the 1940s did use of long-lasting plastic products become cost-effective and widespread. It didn't take long for manufacturers to warm up to plastic's light weight, adaptability, durability and low cost. But the qualities that made plastic attractive to manufacturers and consumers, particularly its durability and low cost, have made it a menace at sea. Plastic debris kills marine mammals, seabirds, turtles and nontarget fish by the millions each year, and causes untold harm to countless others.

Seabirds and marine mammals all too readily become entangled in debris, particularly abandoned fishing nets known as ghost nets. Because the victims are mostly out of sight of human census-takers, reckonings of the toll are necessarily very rough, but at least 100,000 marine mammals are believed to die annually in nets and debris, either by drowning or from exhaustion and starvation. Young seals play with plastic packing-bands, net fragments and other floating objects that then get caught around their necks and strangle them as they grow. Young Hawaiian monk seals—an endangered species—have become entangled in netting and then snagged on coral reefs.

Great whales are victims, too. In the last six years, 79 whale deaths from entanglement have been reported off the coasts of North America. The true death toll is probably considerably higher. Whales also have been seen ingesting plastic.

Plastic trash is one of the reasons almost all the world's sea turtles are on the endangered list. Ingestion of plastics by leatherback turtles has been documented in New York, New Jersey, French Guiana, South Africa and France. The same is happening to green turtles in the coastal waters of Japan, Central America and Australia, olive ridley turtles off the western coast of Mexico and hawksbills near Costa Rica. The turtles apparently mistake floating plastic bags for jellyfish, one of their favorite foods. Sea turtles also become entangled in monofilament fishing line and are unable to feed, swim or surface to breathe.

Seabirds such as shearwaters become trapped in fishing nets at the surface when they see the fish but not the net and dive into the webbing. Murres are trapped when they dive several meters down into a net. Fifty of the 280 species of seabirds in the North and South Atlantic, North and South Pacific and sub-Antarctic are known to have eaten plastics. They suffer blocked passages, ulcerations, toxic accumulations, decreased appetite and strangulation, often fatally. Almost three-fourths of Laysan Island albatross carcasses examined by researchers in a 1966 study were found to have plastic in their stomachs or gizzards. The young birds apparently had been fed plastic pellets their parents picked up at sea.

Efforts to combat the plastic tide are not yet keeping pace with its growth. At the international level, efforts are under way to win U.S. ratification of Annex V to the 1973 Marine Pollution (MARPOL) Convention, which would ban at-sea dumping of all persistent plastics and synthetics. The annex also would require that ports provide facilities for receiving refuse generated by merchant ships. But before it can go into effect, the annex must be ratified by nations representing 50 percent of the gross tonnage of the world's shipping fleet. That goal is proving difficult to achieve. Ratification by the United States, long awaited, would bring the total to about 45 percent, and action by other countries that could be expected to follow suit would probably bring the annex over the top. Observers believe this may come about within the next six months, after which Congress will need to pass legislation enabling the United States to comply.

Jim Coe sees Annex V as a useful step toward cleaning up the seas. "The general freedom of the seas for disposal of trash seems to persist in the minds of many," he says. "It's just a matter of 'out of sight, out of mind.' There's never going to be an enforcement regime that's going to be able to bust everybody who throws stuff overboard. But that doesn't detract from the importance of Annex V and national legislation aimed at the same problem. All the pressures together create greater awareness of the problem and increase people's inclination to behave differently. So Annex V is part of an education effort, because in the end people aren't going to do something about the problem unless they want to."

More economically feasible technologies are available for large vessels such as tankers and cruise liners than for fishing boats and other small vessels, according to Coe. But systems on larger vessels are only as good as the people who operate them. "They're just not all sailor-proof," he says, "so if some dummy walks up and starts punching buttons, the system falls apart or disconnects or blows apart." As for the smaller vessels whose owners can't afford compaction equipment, Coe sees just plain sorting and storage as the likely method of dealing with most refuse. "We're not talking about a really difficult solution here—they can either keep it or they can throw it over the side," he says.

But stowing trash on board will accomplish little unless it is properly handled when the vessels reach port. It will not do, obviously, to repeat an incident reported in the October, 1986, issue of the *Alaska Fisherman's Journal.* In that case a fisherman saved all his plastic garbage for several weeks, deposited it in a dumpster at a cannery in False Pass, Alaska, then that night watched with chagrin as a cannery worker picked up the dumpster with a forklift, drove it out to the end of the dock and dumped the contents into the outgoing tide.

Awaiting action in Congress are seven bills to ban the use of certain nondegradable plastics, assess the impacts of discarded plastics on the environment and particularly on fish and wildlife, develop recommendations on actions to alleviate the problem, and deal with problems caused by driftnets. There is high interest in these measures on Capitol Hill, and hearings are likely this summer.

Volunteer efforts are growing at the state level, witness the spread of Oregon's citizen beach cleanup. Last September there were similar campaigns in 14 other states. But as helpful as these activities are in focusing attention on the problem, new rafts of trash are disgorged on the cleaned-up beaches by the next tides. Al Pruter of Natural Resources Consultants says: "The problem will continue unless steps are taken to reduce the amounts of plastics entering the oceans or to alter the persistent character of plastics."

In Newport, Oregon, the former option is being addressed by people like Fran Recht. She is the director of a one-year NMFS-funded pilot program to limit vessel-generated debris. Jim Coe calls her "a five-foot-tall ball of fire." She approaches her present job with the same dedication that motivated her recent stint as a Peace Corps volunteer in Latin America. Most of Recht's work is educating people on the consequences of dumping at sea and encouraging all vessels to bring waste back to port, where it can be collected at adequate and convenient facilities. In a ten-foot by 20-foot nondescript building on the waterfront, she drafts plans, designs posters, makes phone calls and figures out ways to draw attention to the problem. Then she walks along the docks greeting fishermen and cajoling them into putting warning signs in their boats about damage done by plastics at sea.

Under Recht's guidance the port of Newport already has done a study of garbage-handling facilities. "That's helped us find out what's in the waste stream, some of which we've found can be sold for recycling," she says. "That could be a potential source of money for other ports to run programs like mine without government grants."

Recht also has worked with shoreside fish processors on several projects, among them supplying more trash receptacles at dockside and attaching messages about the plastics problem to their payment checks to fishermen. She has persuaded the Coast Guard Auxiliary, a volunteer group that teaches boating safety, to put more emphasis on the importance of keeping plastic debris out of the waters, and at her urging the sheriff's department decided to include references to the hazards of marine debris in its talks to school children about law enforcement.

Through her efforts, posters and newspaper articles about the problem adorn the walls of a restaurant frequented by high school students. "We really have to get into the education system to effect long-term change if we want this to be more than a one-shot government-funded program," Recht says.

But plastics are proliferating faster than ways are being found to deal with them. A famous scene from the 1967 satirical film "The Graduate" captured the wave of the future nicely. A businessman told Dustin Hoffman at a suburban party, "I just want to say one word to you, one word. Plastics." Hoffman stood for a moment bewildered. Then the man added, "There's a great future in plastics."

He was right. Witness plastic soda bottles, plastic microwaveable frozen food trays, plastic fast-food packaging. Campbell's Soup is testing plastic and cardboard boxes and microwave-ready plastic bowls. Even Army field rations now come in camouflaged, heat-sealed plastic wrappers. In a strange twist, the more short-lived the manufactured goods we buy, the more we are packaging them in indestructible containers. Production has doubled in the last ten years, with the plastics industry now synthesizing and using about 22 million tons of resin annually.

Plastic products are multiplying because manufacturers find they enhance their position in the marketplace, and the consumer is responding. Much of the reason, however, is because disposal and the impact of all these products on the environment are not reflected in the price of the packaged product. "If the environmental costs were factored in and passed on to consumers," says Al Manville, Defenders of Wildlife biologist and chairman of the Entanglement Network, "we'd be generating a lot less trash."

So far, state efforts to create economic incentives against dumping trash are limited to litter taxes and deposits on containers. Washington has a litter tax on the gross proceeds of businesses that make and sell containers. The $2.5 million it yields annually pays for public education and youth programs to clean up litter. California is just beginning a recycling incentive system based on payment by manufacturers of one cent per container. Recycling centers run as private businesses accept the used containers and refund the one cent to consumers out of money paid by processors of the recyclable product, who are reimbursed from the state fund. Deposits will go up annually for the next several years unless at least 65 percent of all containers of each type sold are not redeemed by consumers.

Eleven states—Alaska, California, Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Vermont—have banned nonbiodegradable six-pack holders and other can-connecting devices. But not all these bans are effective. A recent study by the Oregon liquor control board found a high degree of compliance with the law, but not all the rings were found to decompose within the required 120-day time limit and under all circumstances. In fact, rings placed in water for up to five months simply did not decompose, and they are expected to remain indefinitely in the marine environment.

Yet a recently completed research project of the Research Triangle Institute in North Carolina concluded that technology now available can make plastics that break down on exposure to light and biological organisms. If widely used, this could make some of the plastic debris much less hazardous to marine life. It is effective with polypropylene and polyethylene products such as containers, ropes and the packaging bands frequently implicated in maiming and strangling young seals and sea lions.

For fishing gear, the picture is more complicated. While gear can be made that will degrade within a given time period, there are special problems with some types of gear. And Defenders' Manville says it would be a mistake to depend on degradability as a total solution to the plastics problem. "For one thing, even if it works, it still takes time," he says. "And some degradable plastics shred up into sharp-edged spikes while they are breaking down, and thus are even more dangerous to wildlife. And there's a big unknown here: we just don't know what the byproducts of plastic degradation are going to do to the environment."

In Oregon, Sara Vickerman of Defenders has persuaded legislators to introduce a bill—one of many legislative proposals in the state aimed at limiting plastic debris—to generate revenue by assessing a fee on the plastic products that harm wildlife in the marine environment, and to educate the public by requiring a warning label on these products. Such a proposal seems more promising than banning a particular product or type of packaging, a suggestion that has generally met with stiff industry opposition as undue interference with the free market. Proposals to ban the use of plastic containers have failed in New Jersey and New York.

Several states are taking a different tack by promoting research on plastics recycling. Michigan awarded $600,000 to a company to develop a system to convert mixed waste plastics into other products, and New Jersey is contributing funds to the Center for Plastics Recycling Research at Rutgers University. Established by the Society of the Plastics Industry, the center receives the bulk of its funds from industry.

There are some hopeful developments in plastics recycling. Some plastics, for example, can be recycled and used as insulation material in buildings. But recycling-research programs are complicated by the thousands of varieties of plastics in use and the fact that some cannot be remelted and formed into new products. Moreover, types of plastic that look alike may require a chemical or burn test to tell them apart. Without being able to separate out large amounts of specific types of plastics, recycling is not likely to be profitable. Federal regulations bar the reuse and recycling of plastics for some food packaging. All this means that recycling is a complicated alternative. Similarly, degradable plastics may lose the very qualities that have made plastics attractive—durability and adaptability.

All of these avenues—degradability, recycling, improvements in laws and enforcement on dumping, and cutting down on waste—must be taken to effect any real improvement, according to Defenders' Manville. Waste reduction is the surest and most environmentally sound, he believes, and he thinks the way to achieve it is to pass costs of disposal and cleanup on to consumers. "If every plastic bag cost a dollar or two, we'd be a lot more interested in reusing them," he says. Americans may seem wedded to a throwaway lifestyle, but Manville believes we are capable of change. "Look at how many of us gave up cigarettes," he points out. "I don't think plastic's as addictive as tobacco."

Like Jim Coe, Manville believes most people vastly underestimate the danger of plastics in the marine environment. He also points out that there have been recent reports of humans entangled in plastic: propellers fouled and divers caught in net fragments. "When we realize we're one of the species that suffer from plastic trash," he says, "maybe we'll sit up and take notice." ☐

William H. MacKenzie is a Portland, Oregon, journalist who formerly served as counsel to the House Subcommittee on Fisheries and Wildlife Conservation and the Environment.

STATEMENT OF DR. JUDITH S. WEIS, AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES

Senator HOLLINGS. Dr. Weis?

Ms. WEIS. Yes; I am Dr. Judith Weis, professor of zoology at Rutgers University. My research is in effects of pollution on aquatic organisms.

Today, I appear on behalf of the American Institute of Biological Sciences, the Federation of Professional Scientific Societies, and research labs representing life sciences in all varieties of such disciplines. I deeply appreciate the difficult budget situation. However, I have great difficulty understanding the tremendous reductions requested for natural resources and habitat.

We are continually depressed about the drastic cuts proposed for NOAA. We feel that these reductions will seriously impede important research and development in marine biology. A substantial part of this reduction is attributable to the plans to terminate the Sea Grant Program. The Sea Grant Program is now the only effective means of coordinating academic expertise in research, education and advisory services in the Coastal and Great Lakes States.

Sea Grant has accomplished much, and much more needs to be done. The nationwide network is now comprised of 22 Sea Grant colleges and seven institutional programs managing a net worth of more than 300 universities and institutions.

The current national focus on economic competitiveness has led to a proposal to create a number of science and technology centers under NSF. We endorse those recommendations and wish to point out that the centers under NSF appear to have the same operating rationale as Sea Grant.

Economic competitiveness thus appears to justify not only continuation of Sea Grant, but also an increase in funding. However, due to continued cutbacks, nearly every university Sea Grant Program has had to cut its operations in all areas, research, education, advisory service and management. These cuts are around 30 percent. The number of projects supported has declined, even as costs continue to rise.

In New Jersey alone, $300,000 to $400,000 worth of fundable, worthy research projects were not funded at all this year. Other projects were funded at 50 percent of the budget requested. We urge you, again, to reject the contention that responsibility for this research should be forced on the private sector. The National Marine Fisheries Service supports the management, conservation and development of the Nation's living marine resources. The President's plan to reduce appropriations would amount practically to a dismantling of the National Marine Fisheries Service.

Drastic cuts proposed in habitat research will cripple important studies on impacts of environmental factors such as pollution and low oxygen on our fisheries resources.

The proposed loss of 64 positions in this area will effectively wipe out this research program at the Sandy Hook Laboratory. These cuts will also undermine NOAA's new initiatives in estuarine research.

Estuaries are vital research areas for many commercially important species and deserve attention since environmental degradation is often prevalent.

Given Congress' concern about world resources and food supply, enhancing fish stocks is one of the most important tools that might be used to achieve a long-range solution to the basic problem of sustaining a growing population.

As the health effects of eating fish become known and more people eat fish regularly, our fisheries have been utilized to the maximum. We must import shrimp and other fish products from countries with more advanced stock enhancement technologies, such as aquaculture.

In a year when competitiveness is a catch word, programs are being curtailed in the very areas that could make the United States more competitive in fishery products. The overwhelming needs to manage endangered marine species to better sustain and enhance fish stocks and to study estuarine and ecosystems which are changing due to environmental pressures and changes in pollution, must be considered high-priority needs.

Clearly, NOAA's budget should not only be restored to previous budget levels, but enhanced. Professional biologists join me in urging you to provide additional funding at least consistent with the current level for the National Marine Fisheries Service to provide increased funding for the Office of Oceanic and Atmospheric Research and to reinstate the Sea Grant Program.

Thank you.

Senator HOLLINGS. Thank you.

Senator Sasser, will you take care of the next testimony while I vote? Did you vote?

Senator SASSER. No; the bells just went off.

Mr. KANE. You have 5 minutes.

[The prepared statement of Judith S. Weis follows:]

TESTIMONY OF THE AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES

PRESENTED BY JUDITH S. WEIS, PH.D.

Mr. Chairman and members of the Subcommittee:

I am Dr. Judith S. Weis, Professor of Zoology at Rutgers University. My training is in aquatic and developmental biology, with special emphasis on the effects of pollution on aquatic organisms. It is through my personal experience in research supported by NOAA that I am able to tell you of the importance of continued funding of programs of the National Oceanic and Atmospheric Administration, (NOAA). Today, however I appear on behalf of the American Institute of Biological Sciences. AIBS is a federation of professional scientific societies and research laboratories representing life scientists in a variety of sub-discliplines. Collectively and individually, we whole-heartedly support adequate funding for marine biology research and management programs conducted under NOAA.

Mr. Chairman, I deeply appreciate the difficult budget situation in which the United States finds itself. I support this Administration's need to craft a balanced budget and attempts to resolve the trade deficit. However I have great difficulty understanding the tremendous reductions requested for natural resources and habitat conservation.

In 1976 the United States extended its fishery jurisdiction to 200 nautical miles encompassing about 20 percent of the world's renewable marine resources. With that extension we assumed legal and moral responsibility for the Nation and the world to assume wise stewardship of these resources. We also held forth the hope that the US would become more self sufficient in supplies of seafood by either reducing dependence on imports or offsetting our trade deficit in fishery products by exports of seafood.

Today we realize that we are neither managing our fisheries well nor realizing a reduction in our trade deficit in fisheries. In fact the situation in trade has worsened each year as our dependence on imports to meet record demand grows.

As professional biologists, we are particularly distressed about the drastic cuts proposed by the Reagan Administration for the NOAA, particularly for the ocean and coastal programs. We are particularly concerned because the brunt of the cuts fall on these two programs: Oceanic and Atmospheric Research would be cut by about one-third; from $145 million available under the current FY 87 plan to only $82 million this year. The National Marine Fisheries Service would be cut from $162 million in FY 87 to $99.5 million under the Administration's request, again about a one-third reduction. Professional biologists feel that these reductions will seriously impede the important research and development efforts in marine biology which have been initiated in years past, and preclude the opportunity to conduct appropriate new endeavors in the future. Through NIH, biomedical funding has increased considerably. However, NIH does not fund this kind of work. At NSF, the Biological Oceanography Program concentrates on deep ocean or "blue water" research, rather than on inshore estuaries, and the more "applied" work that NMFS performs. The administration claims to support "basic" rather than "applied" research, but this distinction is never clear. Certainly some of the health related research of NIH is equally as "applied" as NOAA's. In sum, if these reductions are not resoundingly rejected, our nation's marine and coastal areas will pay the cost.

NOAA's primary research arm, the Office of Oceanic and Atmospheric Research (OAR) is charged with obtaining information on enviromental systems needed for sound policy decisions, and ensuring the transfer of this information to NOAA's "service" arms. Some of the areas in which OAR is active are acid rain research, especially the aquatic effects of acid deposition, and the study of greenhouse gases. Given Congress' explicit concern about these two problems, the suitability of increased, rather than decreased funding for OAR is all the more obvious. In addition, it is the role of OAR to enhance our ability to make use of natural marine resources, including minerals, fish stocks, and even pharmaceutical applications. These areas of study represent not only the future of marine biology but also the cutting edge of applications for the betterment of humans.

In the area of fisheries research and resource management we have identified 3 areas of critical concern:

1. The methods of collecting, analyzing, and disseminating of information on fish stocks, populations, and habitats are inadequate in quantity, quality, and timeliness for effective management of the Nation's fishery resources.

2. Basic research in fishery biology, community ecology, and fishery applications do not receive the sustained support essential to expand our knowledge base as an investment in future resource productivity, and thus to improve our efficiency in conserving and managing the Nation's fishery resources.

3. Protection and enhancement of fish habitats and adjacent wetlands, including riparian habitats, and control of airborne and watrerborne contaminants have not been sufficiently effective to assure the productive future of those critical habitats in the face of increasing encroachments by incompatible uses.

Within OAR, we are most deeply concerned about the substantial cuts proposed by the Administration for Oceans and Great Lakes Programs. Overall, $63.6 million is available in the current fiscal year, FY 87. For FY 88, the President would give this subactivity $10 million. We urge you to actively reject a reduction of this magnitude. A substantial part of this reduction is attributable to the Administration's plan to terminate the Sea Grant Program. In past years, Congress has rejected this proposal. The continuation of the Sea Grant Program is essential if we are to continue to develop the Nation's marine resources in a sound manner. The Sea Grant program is now the only effective means of coordinating academic expertise in research, education and advisory services in all coastal and Great Lakes states across the nation. While much has been accomplished through the Sea Grant program, many more opportunities and needs exist.

Today the nationwide network is comprised of twenty-two Sea Grant colleges and seven institutional programs. Together they manage a network of more then 300 universities and affiliated institutions, including a number from inland states. The current national focus on economic competitiveness has led to a proposal to double the National Science Foundation (NSF) budget over five years and to create a number of Science and Technology Centers. We endorsed the recommendations for

NSF. We want to point out that the Centers appear to have the same operating rationale as Sea Grant. The overall economic competitiveness initiative thus appears to justify not only continuation of Sea Grant, but also an increase in funding. While the Sea Grant program today represents our primary national capability in many marine resource areas, concerns exist that this capability is being eroded. Nearly every university Sea Grant program has cut operations. Cuts extend to all areas of the programs--research, education, advisory services and management. At the institutional level, these cuts exceed 30 percent. Number of projects supported has declined by one-third, even as federal administration costs continue to rise. More seriously, the number of graduate students has declined significantly. These graduate students are essential to our future technology base. In New Jersey alone $300,000-400,000 worth of fundable projects (scientific research) were not funded at all this year. Other projects were funded at 50% of the budget requested. We urge you to again reject the Administration's contention that further responsibility for this area should be foisted on the private sector.

Finally, we are in serious disagreement with the Administration about the appropriateness of reductions in other Oceans and Great Lakes Programs, as well. We urge you to provide substantially more funds for the various programs of this subactivity, consistent with the important goal of ensuring the optimal use and management of Ocean and Great Lakes environments and their resources.

The National Marine Fisheries Service supports the management, conservation, and development of the Nation's living marine resources, including marine mammals and endangered species and their habitats. The President's plan to reduce appropriations from $170 million in 1987 to $99 million in 1988, would amount to a dismantling of the National Marine Fisheries Service. When we need to improve fisheries programs and habitat protection, this budget would cut existing programs by almost 50 percent. In addition, over half of the fisheries research fleet would be deactivated and strategically located laboratories would be closed. In New Jersey the only Federal fisheries laboratory at Sandy Hook already impacted by a disastrous fire in 1986 would be closed. New Jersey would lose a research capability which has been the major contributor to our knowledge base on fisheries and habitat in the Mid-Atlantic Bight over many years. Indeed the need is much greater today than ever before. Abandonment now would indeed be tragic to New Jersey and to the Nation.

As investigators, we are disturbed about the proposed cuts in the Information Collection and Analysis subactivity. This area provides for the collection, analysis and dissemination of biological data on marine and coastal species and their habitats. The proposed funding level will allow these activites to continue only for the the most critical issues, while many important areas of inquiry and analysis will be eliminated.

I am particularly concerned about proposed cuts in protected species biology, (-1.275 million), habitat research (-5 million). The drastic cuts proposed in habitat research will cripple important studies on impacts of environmental factors such as pollution and low oxygen on our fisheries resources. The proposed loss of 64 positions in this area will effectively wipe out this research program at the Sandy Hook laboratory, one which has been a national leader in such studies. At this crucial time, these cuts will undermine NOAA's new initiatives in estuarine research. Estuaries are vital nursery areas for many commerically important species. They deserve attention since environmental degredation is often prevalent. We are also concerned about proposed cuts in habitat resources evaluation, (-1/2 million); and marine mammal research, (-1.6 million). Proposed cuts in both funding and staffing for the stock enhancement and disease research program are worthy of your attention, as well.

Given Congress' concern about the world resources and food supply, these areas of research should be increased rather than decreased. Enhancing fish stocks is one of the most important tools that might be used to achieve long-range solutions to our most basic problem--sustaining a growing population. As the health effects of eating fish become better known and more people eat fish regularly, our fisheries have been utilized to the maximum. We must import shrimp and other fish products from countires with more advanced stock enhancement technologies (such as aquaculture). In a year when "competitiveness" is the catch word, programs are being curtailed in the very areas that could make the US more competitive in fishery products. At a time when fish consumption is rising rapidly while stocks decline due to pollution and overfishing, additional funding resources, rather than cuts for the country's fishery agency are called for.

We are aware that the Administration has proposed $29 million for later transmittal contingent upon enactment of a Marine Fisheries Conservation Assurance Program. This depends on Congress passing legislation to require salt water fishing licenses. While we are not opposed to this measure in concept, we feel that it is chancey at best and does little to offset the inappropriateness of the Administration's funding priorities. The Administration contends that "decreases are proposed for activities that are not required to meet highest priority research and management needs". We are disturbed by this statement. We feel that a thoughtful consideration of the most pressing long-range issues facing our Nation and the world would not lead to this conclusion. On the contrary, the overwhelming need to manage endangered marine species, to better sustain and enhance fish stocks, and to study marine estuarine ecosystems which are changing due to environmental pressures and pollution faster than we can ever hope to assess the implications, must be considered "highest priority" needs. Clearly NOAA's budget should be not merely restored to previous levels; but enhanced.

Professional biologists join me in urging you to provide additional funding at least consistent with the current (FY 87) level for the National Marine Fisheries Service; to provide increased funding for the office of Oceanic and Atmospheric Research, and to reinstate the Sea Grant Program. Thank you for your attention.

STATEMENT OF JOHN QUADROS, NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

Senator SASSER. OK. We will hear then from Mr. Quadros. You may proceed, Mr. Quadros.

Mr. QUADROS. Thank you. The organization has always tried to focus on two things: Protecting the public safety and protecting the long-run cost effectiveness of the taxpayer.

Our first criticism of the administration's proposed budget concerns what it hides rather than what it presents. NOAA's budget documents indicates that on NOAA page 117 there is a decrease of 554 permanent positions; that the document does not explain these cuts at all except for 128.

We note that this year has seen the beginning of a phase-out in consolidation of satellite field service stations, all of which were not presented in NOAA's budget document. We understand that the National Weather Service is on the verge of a major reorganization, and none of the reorganization plan, nor its impact on the fiscal year 1988 budget is presented in NOAA's budget document.

We request that this subcommittee investigate the discrepancies we have identified in our paper. Recently, the issue of airline delays became a focus of public concern in congressional hearings. Airline spokespersons indicated that over 60 percent of the air traffic delay problems are due to weather-related causes.

We believe that now, more than ever, the air weather safety net should be improved rather than be weakened through contracting out.

Rather than contracting out National Weather Service [NWS] functions at airports, we should upgrade National Weather Service staffing and facilities to make our airports safer, perhaps by colocating National Weather Service personnel in the air traffic control towers along with FAA personnel so that the NWS personnel have continuous 360 degree observational capabilities and can issue forecast amendments and communicate with controllers and pilots instantly.

The proposed budget also includes an increase in user fees for "family of services" users of over 1,000 percent. The estimated revenues from such user fees would be a $1 million increase. These family of service circuits are the basis for dissemination of weather data to the public through media, such as commercial television and radio.

At the same time, the proposed budget includes $3.7 million to create a NOAA port. This will be through a private sector contractor which will provide the data transmission to users and restrict access to the data to NOAA approved users who comply with NOAA port access policies and procedures.

We believe that it is against the public interest to collect higher user fees from users that serve the public's need for information while at the same time appropriating over three times the estimated amount of user fee revenues to create a private monopoly and potential bottleneck regarding data dissemination.

In many respects, the proposed budget is the same as last year's and the year before, in that the same economic and unsafe reductions are proposed. For example, the administration proposes the elimination of Hawaii data bouys and test engineering functions for fierce weather services; Colorado River flood warning system; the Susquehanna River Basin flood warning system; the integrated flood observing and warning system; funding for emergency power for NOAA weather radio; the agricultural weather services program, including the closing of eight National Weather Service offices; specialized agricultural food frost program, reduction of meterological technicians and reduction of GS grades 11 through 15 in NOAA.

In my written statement, I have pointed out exactly why these eliminations jeopardize public safety and are uneconomic in the long-run for U.S. taxpayers.

The National Weather Service is too low now, and it will become worse unless an enlightened approach is taken to stop reductions in budget and personnel.

Thank you.

Senator HOLLINGS. I was down in Brazil 27 years ago, and John Quadros was running for president.

Mr. QUADROS. I was familiar with that name. I often wondered if he was a relative.

Senator HOLLINGS. I was going to say, I haven't seen you in a long time. [Laughter.]

You have gotten into the Weather Service?

Are you familiar with when the rockets went down? It was a bad prediction of the weather.

Mr. QUADROS. That was the Air Force, not the National Weather Service, no.

Senator HOLLINGS. So it wasn't the National Weather Service. In two sentences, what is your testimony of how we have been cutting the Weather Service?

Mr. QUADROS. Cutting it too close to the bone. We have had too much of what we consider the essential parts of the National Weather Service cut back over the years. They are proposed again this year. You and the committee have done a really good job of keeping the money in.

Senator HOLLINGS. Trying to reinstate their cuts. Very good. We appreciate it.

[The prepared statement of John Quadros follows:]

STATEMENT OF
JOHN QUADROS, NATIONAL PRESIDENT
NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

Mr. Chairman and members of the Subcommittee, my name is John Quadros, and I am the National President of the National Weather Service Employees Organization, and I work as a meteorologist in the Weather Service Forecast Office located near San Francisco, California.

Our organization is a union which represents employees of the National Weather Service (NWS) and the National Environmental Satellite Data and Information Service (NESDIS), both within the National Oceanic and Atmospheric Administration (NOAA). We have a strong interest in the NOAA FY 1988 budget and have first-hand knowledge of the likely impact which this budget will have on the general public.

Our organization has always tried to focus on two themes regarding our analysis and comments on the Adminstration's proposed NOAA budget, and these are protecting the public safety and protecting the long run cost-effectiveness for the taxpayer.

I. LACK OF INFORMATION

Like last year, our first criticism of the Administration's proposed budget concerns what it hides rather than what it presents. For example, while the proposed budget indicates that there will be a decrease of 128 permanent positions in FY 1988, the document issued to the Congress by NOAA, called Budget Estimates Fiscal Year 1988: Congressional Submission (NOAA's Budget Document), indicates on page NOAA-117 that far more positions will be lost. That page indicates the following:

	Permanent Positions
1987 Currently Available	4,059
1988 Estimate	3,505
Decrease	554

Another problem is page NOAA-40 of NOAA's Budget Document which indicates that there will be a decrease of 203 permanent positions due to OMB Circular A-76 "contracting-out." Last year "contracting-out savings" were reflected in "adjustments to base" statistics. This year, however, there were no adjustments to base for NWS or NESDIS permanent positions -- in other words, there were no changes made between the NWS and NESDIS "1987 Currently Available" number of permanent positions, and the "1988 Base" number of permanent positions on pages NOAA-31 and NOAA-32.

One would assume that the lack of adjustments to base means there will be no "contracting-out" of NWS functions in FY 1988, and that the decrease of 203 positions do not apply to NWS or NESDIS. If this is true, then our organization is strongly in favor of this aspect of the proposed budget. However, we are skeptical that NWS and NESDIS will cease "contracting-out," and therefore conclude that the budget statistics are not being accurately presented.

We note that this year has seen the beginning of a phase-out and consolidation of Satellite Field Service Stations, all of which were not presented in NOAA's Budget Document. Finally, we understand that the NWS is on the verge of a major reorganization, and none of the reorganization plan nor its impact on the FY 1988 NWS budget is presented in NOAA's Budget Document.

Last year we had the same problem trying to analyze the proposed budget, when we discovered discrepencies in the statistics being presented to the Congress, and the problem has not ceased. For our organization, the Congress or anyone else to make informed comments or judgments regarding the proposed budget, NOAA should give clear and accurate information. We request this Subcommittee to investigate the discrepencies we identified so that we may comment on them in a responsible way.

II. CONTRACTING-OUT NWS FUNCTIONS

We believe that contracting-out NWS functions is hazardous to the public safety, and therefore the practice should be stopped, and reversed in cases where key functions have already been contracted-out. Last year we cited the weather-related crash of Delta Air Lines Flight 191 at the Dallas/Fort Worth (DFW) Airport in Texas on August 2, 1985, in which 137 people were killed, as an example of a potential danger which could result in "contracting-out" NWS functions at the nation's large airports. Recently the issue of airline delays became a focus of public concern and congressional hearings, and airline spokespersons indicate that over 60% of the air traffic delay problems are due to weather-related causes. We believe that now more than ever the air-weather-safety net should be improved rather than be weakened through "contracting-out."

How can contracting-out increase the risk at airports? First, only the observation functions are "contracted-out," and the forecast functions are transfered to the nearest Weather Service Forcast Office, which may be located many miles away from the airport. Therefore the contract observer does not have the authority to issue a Limited Terminal Forecast at the airport itself. Second, the contract observer may make a mistake in transmission of an observation. Third, the forcaster may not be able to appreciate rapidly changing conditions when the forcaster receives mere periodic observations instead of the potentially continous observations the forcaster could gather personally if he or she were located at the airport itself.

Rather than "contracting-out" NWS functions at airports, we should upgrade NWS staff and facilities to make our airports safer, perhaps by co-locating NWS personnel in the air traffic control towers, along with FAA personnel, so that the NWS personnel have continuous 360 degree observational capabilities and can issue forecast amendments and communicate with controllers and pilots instantly.

III. USER ACCESS

We understand that the proposed budget includes an increase in user fees for "Family of Services" users of 1,000 percent. The estimated revenue from such user fees would be $1.1 million which is a $1 million increase over the present fees which produce $100,000 in revenue. The "Family of Services" is comprised of four data circuits which are used to make environmental data available to users outside the NWS. These circuits collectively make a full complement of environmental information available to users that serve the meteorological community. In other words, these circuits are the basis for dissemination of weather data to the public through media such as commercial television and radio.

At the same time the proposed budget includes $3.7 million to create a "NOAA Port" to format and distribute data and data products, including conventional data sets, to users. NOAA's intent is to operate NOAA Port through a private-sector contractor, which would provide the data transmissions to users, sell users the receive-site equipment, and restrict access of the data to NOAA-approved users who comply with NOAA Port access policies and procedures.

On the one hand, the proposed budget would make it more costly for a "Family of Services" user to receive data, and on the other hand, the proposed budget could create a potential bottleneck for data dissemination the control of which would be in the hands of a private contractor rather than a government agency. We believe that it is against the public interest to collect higher user fees from users that serve the public need for information, while at the same time appropriate over three times the estimated amount of user fee revenues to create a private monopoly and potential bottleneck regarding data dissemination.

IV. NWS CUTBACKS

In many respects the proposed budget is the same as last year's in that the same uneconomic and unsafe reductions are proposed. For example, the Administration proposes the elimination of maintenance funds for Hawaii data buoys used to collect meteorological data, and the reduction of data bouy test and engineering functions, despite the holding in one court, that the NWS was liable for the deaths of three fishermen in a fierce storm that forecasters failed to predict due to failure of a weather observation buoy.

Likewise, the Administration proposes to reduce fire weather services, a move which will produce a greater risk to human safety and for potential economic loss, especially in western states.

The funding for the Colorado River Basin flood warning system, the Susquehanna River Basin flood warning system, and the integrated flood observing and warning system would be reduced under the proposed budget. Funding for emergency power for NOAA Weather Radio would be reduced, and in times of severe weather, at times when regular power systems might fail, is when NOAA Weather Radio is needed most.

Besides proposed reductions which jeopardize public safety, there are proposed reductions that will hurt certain segments of our economy and, in the long run, end up costing more than they save. A good example is the proposed elimination of the agricultural weather services program (including the closing of eight NWS offices) and eliminating the specialized agricultural fruit frost program.

As we said last year, there are significant public interest reasons to maintain the agricultural NWS programs. Private meteorological services may be good for growers who can afford them, but are of little help to many other growers who cannot afford the extra cost of private forecasts. What if private services are not available? How do we protect the other segments of the economy which are dependent upon growers who cannot afford to purchase private forecasts? Everyone, from the trucker down to the consumer, suffers if a crop fails due to lack of public forecast services, and they cannot force the grower to purchase private forecasts if the grower can not afford to do so.

Finally, the Administration proposes the reduction of meterological technicans (met-techs), and the reduction of GS Grades 11-15 in NOAA. We are continually faced with cutbacks of the number of personnel at NWS offices, and now are faced with reductions of higher-paid but experienced personnel. Fewer and less-experienced NWS employees are what we will end up with, a situation which greatly increases the risk to public safety and which will increase the cost to the taxpayer in the long run.

V. ON-SITE TRAINING

We support the proposed budget line item for an increase of

$2.5 million to help plan and demonstrate operational deployment of new technologies and techniques for the NWS. We have long advocated that new equipment and technological improvements should be at least as good as the systems which are being replaced, and that the operators should be fully trained to use the new equipment.

We should enhance and upgrade the NWS, not only with modern equipment (which is included in the budget), but also in the number of experienced employees. The NWS is too "lean" now, and it will become worse unless an enlightened approach is taken to stop the reductions in budget and personnel. Let us not be penny-wise and pound-foolish.

STATE DEPARTMENT AND JUSTICE DEPARTMENT ISSUES

Senator HOLLINGS. The next panel will speak on various interests in the State Department and the Justice Department. We will hear from Dr. Ronald Henderson from Johns Hopkins University, Father Harold Bradley and Father Collins from Georgetown.

STATEMENT OF DR. DONALD A. HENDERSON, DEAN, SCHOOL OF HYGIENE AND PUBLIC HEALTH, THE JOHNS HOPKINS UNIVERSITY

Senator HOLLINGS. Father Collins, good to see you.

Father COLLINS. Good to see you.

Senator HOLLINGS. Father Bradley, good to see you, too. Tell us how you are going to move Gary Hart and put another one in. [Laughter.]

While we are sitting here.

Dr. HENDERSON. I had nothing to do with that, Senator.

Senator HOLLINGS. Good. Tell us what Johns Hopkins has going now.

Dr. HENDERSON. Senator, I am appearing in behalf of seven national organizations. The issue really relates to international health and not Johns Hopkins alone, although we are important in it.

Rather than to go over the testimony, let me provide you with just a brief summary of implications and some of my personal comments. Two international organizations, the World Health Organization [WHO] and the Pan American Health Organization are both of critical importance to the health of U.S. citizens, and both are now experiencing grave fiscal problems.

The cause, quite simply, is that the United States has to pay annual assessments to that annual organization, which, by treaty, it has agreed to pay and has paid regularly for 38 years up until last year.

Senator HOLLINGS. Why did we cut it off last year? We transferred it over and didn't pay?

Mr. KANE. We appropriated all the money, but deferred the outlay of $130,000,000 until October 1.

Senator HOLLINGS. Was Dr. Arnold Schaefer with that group?

Dr. HENDERSON. Donald Noland. I was with it 10 years.

Senator HOLLINGS. How about Dr. Schaefer? Do you remember him?

Dr. HENDERSON. I don't remember him.

Senator HOLLINGS. He made the study on hunger, and after he founded it under the Nixon administration, they told him to go down to the Community for Disease Center and not communicate, or else. That was interesting. So he joined the World Health Organization and then studied the Indian problems, which resulted in studies in diabetes and alcoholism on the reservations.

Dr. HENDERSON. It is a major problem.

Senator HOLLINGS. Tell us about this.

Dr. HENDERSON. I think in simple terms, I think there is a lot of complexities in how the funds have been handled, but let me put it this way: In 1987, our assessment was $61 million. That is last year. So far we have paid $7 million on last year's amount. We have paid nothing for 1986, although that is normally due in January 1986. Today, we are the only industrialized country which is behind in our payments.

Senator HOLLINGS. That is an embarrassment.

Dr. HENDERSON. It is an embarrassment for all of us.

Senator HOLLINGS. No abortion or planned parenthood.

Dr. HENDERSON. It has really nothing to do with this.

Senator HOLLINGS. That is not a question.

Dr. HENDERSON. This is not, in our terms, a large amount of money, these are really resounding errors on our health budget, if you will, and yet I would like to point out that I think these are not give-away moneys. I had the privilege for 10 years of serving as Director of the Small Pox Eradication Program in WHO. In the United States, we would have vaccinated all of our children throughout this country up until 1971–72. We were paying for quarantine officers. We had the yellow vaccination certificates. In all, this was estimated to cost us $150 million a year in the United States

The total amount of money that we are being asked to pay in an assessment is only $60 million. We are really saving 2½ times in 1969 dollars what our total assessment is for WHO. It is a small amount of money, and yet it is an important point.

At this time, we depend in the medical community very much on WHO for several things: One, the Senate and the House have both felt that the child survival program providing vaccines to children throughout the world, and the Diarrheal Disease Program are tremendously important, have earmarked funds for this, and WHO is taking the lead in that.

They are doing a lot of good. We now have a problem, Senator, which is called AIDS. I happen to chair a committee in the USAID looking at research on AIDS, and I can tell you we are facing a problem which is not unlike the black death in the middle ages. We are looking at Central Africa, with 30 percent of women coming to pregnancy, with pregnancy, coming to birth, with AIDS, with the virus.

We have asked WHO and the Pan American Health Organization to take a lead in this activity, and we are providing some funds in that support. At the same time, we are dismembering the only organizations, the only international health organizations we have to turn to.

Thus, our plea to you in the Senate and to the House is to fund these organizations only as according to treaty and according to budgets which the United States has agreed to in the hearings in the World Health Assembly.

Senator HOLLINGS. We have been timely with WHO for, what, 38 years?

Dr. HENDERSON. Thirty-eight years. Last year was the first year.

Senator HOLLINGS. What is the AIDS budget? We are going to have to pay to start to try to catch up on that one.

Dr. HENDERSON. The AIDS budget? I think what is planned in Health and Human Services is close to $1 billion.

Senator HOLLINGS. That is overall. How about for us? What is the WHO budget? Is that their budget in the World Health?

Dr. HENDERSON. No; World Health is seeking contributions from countries around the world. At this point, they are hoping to come up with as much as $40 to $50 million this year. These are small amounts of money for a huge problem, and it is not only what we provide to AIDS; it is this whole structure that you have of an international organization which is in contact with governments, in contact with scientists which can mobilize the scientific community, which brings about medical research people together from different countries which is involved in this whole area of international travel, international health.

These are critical organizations, critical to us as scientists. They are critical to us as far as health, and they are critical to our economics.

Senator HOLLINGS. Seriously, the Soviets contribute to the World Health Organization, don't they?

Dr. HENDERSON. Yes; they do, Senator, and they have paid up their assessments. Their assessments are paid, as is the People's Republic of China. We are the only industrialized country today which is behind in our payments to these two organizations.

Senator HOLLINGS. Thank you very much.

[The prepared statement of Dr. Donald A. Henderson follows:]

ASPH
ASSOCIATION OF
SCHOOLS OF
PUBLIC HEALTH

Statement of

Donald A. Henderson, M.D., M.P.H.
Dean
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on behalf of

American Academy of Pediatrics
American Medical Students Association
American Nurses Association
American Public Health Association
Association of Schools of Public Health
Commissioned Officers Association of U.S.P.H.S.
National Council on International Health
American Association for World Health

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, GOOD MORNING. I AM DR. DONALD A. HENDERSON, DEAN OF THE JOHNS HOPKINS UNIVERSITY SCHOOL OF HYGIENE AND PUBLIC HEALTH, AND VICE PRESIDENT OF THE ASSOCIATION OF SCHOOLS OF PUBLIC HEALTH.

I APPRECIATE THE OPPORTUNITY TO PRESENT THIS STATEMENT TODAY ON BEHALF OF EIGHT NATIONAL HEALTH ORGANIZATIONS:

American Academy of Pediatrics
American Medical Students Association
American Nurses Association
American Public Health Association
Association of Schools of Public Health
Commissioned Officers Association of U.S.P.H.S.
National Council on International Health
American Association for World Health

THESE ORGANIZATIONS REPRESENT HEALTH PROFESSIONALS AND MEDICAL SPECIALISTS WHO HAVE FOLLOWED INTERNATIONAL HEALTH ISSUES THROUGHOUT THEIR PROFESSIONAL CAREERS. I BELIEVE THAT THEIR VIEWS AND OPINIONS ARE REPRESENTATIVE OF THE INTERNATIONAL HEALTH COMMUNITY IN THIS COUNTRY, AND CAN OFFER ADDITIONAL INFORMATION

FOR THIS COMMITTEE AS IT GRAPPLES WITH QUESTIONS OF U.S. POLICY AND PRIORITIES IN RELATION TO MULTINATIONAL AGENCIES AND TO INTERNATIONAL HEALTH POLICY.

WITHOUT DIMINISHING THE IMPORTANCE OR VALUE OF OTHER ORGANIZATIONS OR QUESTIONING IN ANY WAY THEIR MANAGEMENT, WE BELIEVE THAT TWO INTERNATIONAL ORGANIZATIONS IN THE FIELD OF HEALTH, THE WORLD HEALTH ORGANIZATION AND THE PAN AMERICAN HEALTH ORGANIZATION, DESERVE SPECIAL CONSIDERATION BY THE UNITED STATES.

FIRST, WHO AND PAHO HAVE DEMONSTRATED THEIR VALUE TO THE INTERNATIONAL POLICY OBJECTIVES OF THE UNITED STATES IN THE FIELD OF HEALTH FOR MANY DECADES. SECOND, THEY BOTH HAVE MAINTAINED THEIR FUNDAMENTALLY TECHNICAL FOCUS, AIMED AT HELPING THE NATIONS OF THE WORLD TO PURSUE THE HEALTH OF THEIR PEOPLES.

AT THIS TIME, WHEN THE WORLD IS FINDING ITSELF FORCED TO ADD AIDS TO THE LIST OF WORLD HEALTH THREATS TO INTERNATIONAL HEALTH, THE WORK OF THESE INTERNATIONAL HEALTH ORGANIZATIONS TAKES ON EVEN GREATER PRIORITY. FOR THESE ARE THE ONLY ORGANIZATIONS ABLE TO BRIDGE NATIONAL CONCERNS AND SUSPICIONS, TO COLLECT THE EPIDEMIOLOGICAL DATA NEEDED, TO ASSESS THE THREAT, AND TO COORDINATE ACTION WITH ALL NATIONS IN PLANNING WAYS FOR COPING WITH THIS GLOBAL THREAT.

THIRD, BOTH WHO AND PAHO HAVE CARVED OUT A RECORD OF PRUDENT, REALISTIC MANAGEMENT WITH SPECIAL SENSITIVITY TO THE CONCERNS OF THE UNITED STATES. THE CURRENT ADMINISTRATION AND ITS PREDECESSORS HAVE VOTED IN FAVOR OF THE BUDGETS OF BOTH ORGANIZATIONS. IN RECENT YEARS, BOTH ORGANIZATIONS RECOGNIZED THE INTERNATIONAL ECONOMIC SITUATION AND SHOWED NO REAL GROWTH IN THEIR PROPOSED BUDGETS. OVER THE PAST DECADE, THEY HAVE HAD THE LOWEST LEVEL OF BUDGET GROWTH OF ANY INTERNATIONAL ORGANIZATION.

THESE TWO ORGANIZATIONS HAVE BEEN ABLE TO EXTEND THE REACH OF THE U.S. EPIDEMIOLOGICAL SERVICE THROUGHOUT THE WESTERN HEMISPHERE AND ACROSS THE GLOBE.

FINALLY, THESE TWO ORGANIZATIONS OFFER UNIQUE OPPORTUNITIES FOR INTERNATIONAL EXCHANGE AND CONTACT AMONG SCIENTISTS AND HEALTH SPECIALISTS OF THIS COUNTRY AND THOSE OF OTHER NATIONS.

UNFORTUNATELY, THE WORLD HEALTH ORGANIZATION NOW FACES A MAJOR THREAT TO ITS ACTIVITIES. SIMPLY STATED, THE PREVIOUS DEFERRALS OF PAYMENTS OF THE U.S. CONTRIBUTIONS, THE IMPACT OF THE KASSEBAUM-SOLOMON AMENDMENT PRODUCING A SHORTFALL IN U.S. PAYMENT, AND THE DEFERRAL UNTIL OCTOBER 1, 1987 OF NEARLY 90% OF THE FY87 U.S. ASSESSED CONTRIBUTION HAVE YIELDED A SEVERE FINANCIAL CRISIS FOR THE WORLD HEALTH ORGANIZATION.

I WANT TO EMPHASIZE THAT THESE ARE TREATY OBLIGATIONS OF THE UNITED STATES, AND FOR THE FIRST TIME, WE ARE BRINGING INTO QUESTION OUR COMMITMENT TO MEET INTERNATIONAL OBLIGATIONS BY THE FAILURE TO PROVIDE THE U.S. ASSESSED CONTRIBUTIONS TO WHO.

PAHO ALSO FACES A DEFERRAL OF ONE-THIRD OF THE U.S. CONTRIBUTION AS A RESULT OF LAST YEAR'S CONTINUING RESOLUTION. THEREFORE, MR. CHAIRMAN, WE ARE SEEKING:

- THE REVERSAL OF THE DEFERRAL UNTIL OCTOBER 1, 1987 OF THE $36 MILLION IN FY87 APPROPRIATIONS FOR WHO AND $12 MILLION FOR PAHO AS REQUESTED IN THE ADMINISTRATION'S SUPPLEMENTAL FY87 APPROPRIATIONS REQUEST;
- AN ADDITIONAL $15.7 MILLION IN FY87 SUPPLEMENTAL APPROPRIATIONS TO MAKE UP FOR THE SHORTFALL IN THE PAYMENT OF THE U.S. ASSESSED CONTRIBUTION TO WHO;
- THE REPEAL (OR AT LEAST MODIFICATION) OF THE KASSEBAUM-SOLOMON AMENDMENT IN ORDER TO PERMIT FULL FUNDING FOR WHO IN FY87 AND FY88 (I.E., TO THE LEVEL OF U.S. TREATY OBLIGATIONS); AND,
- FULL FUNDING FOR PAHO IN FY88.

THIS COMMITTEE KNOWS THE DETAILS OF THE OVERALL SITUATION WITH RESPECT TO THE KASSEBAUM-SOLOMON AMENDMENT'S IMPACT ON U.S. CONTRIBUTIONS TO THE INTERNATIONAL ORGANIZATIONS. HOWEVER, LET ME RE-EMPHASIZE THAT THE WORLD HEALTH ORGANIZATION, ONE OF THE U.N. FAMILY OF SPECIALIZED AGENCIES, RECEIVED ONLY $10 MILLION OF WHICH SOME $3 MILION WERE APPLIED TO ARREARS FOR 1985, LEAVING ONLY $7

MILLION TO BE APPLIED TO THE 1986 ASSESSMENT OF $61.7 MILLION. THUS, THE U.S. HAS PAID ONLY 11% OF ITS 1986 ASSESSED CONTRIBUTION TO WHO. OUR NATION IS NEARLY 90% IN ARREARS WHILE THE SOVIET UNION, CHINA, JAPAN, AND THE WESTERN EUROPEAN COUNTRIES HAVE ALL PAID IN FULL.

IT IS DIFFICULT FOR US TO UNDERSTAND WHY U.S. SUPPORT HAS BEEN WITHHELD FROM THE ORGANIZATION WHILE AT THE SAME TIME THE U.S. GOVERNMENT REPRESENTATIVES AT WHO GOVERNING BODIES HAVE ALWAYS PRAISED WHO FOR ITS REALISTIC BUDGETS, ITS PRUDENT MANAGEMENT AND THE EFFECTIVENESS OF ITS WORLD HEALTH PROGRAMS.

LET ME JUST NOTE THE FOLLOWING: IN 1983 AT THE WORLD HEALTH ASSEMBLY WHEN THE 1984-85 BUDGET WAS ADOPTED (FOR WHICH THE U.S. VOTED) THE U.S. DELEGATION STATED THAT:

> "(THIS) DELEGATION WAS PLEASED THAT THE PROPOSED PROGRAMME BUDGET DID NOT PROVIDE FOR ANY PROGRAMME GROWTH, A REALISTIC PROPOSAL IN TERMS OF EXISTING ECONOMIC CIRCUMSTANCES...THE OVERALL PICTURE THAT HAD EMERGED OVER THE PAST TWO WEEKS OF DEBATE WAS THAT WHO WAS A VERY IMPRESSIVE ORGANIZATION WHICH WAS DOING HIGHLY USEFUL WORK TO COMPLEMENT THE EFFORTS OF NATIONAL GOVERNMENTS. (THIS) DELEGATION'S DECISION TO VOTE IN FAVOUR OF THE PROPOSED PROGRAMME BUDGET SHOULD BE SEEN AS A REFLECTION OF SPECIFIC APPRECIATION OF THAT WORK, AND OF WHO'S SUCCESS IN PROPOSING A REALISTIC LEVEL OF PROGRAMME GROWTH..." (WHA36/1983/REL/3, pp. 221 and 215).

AT THE 1985 WORLD HEALTH ASSEMBLY, THE U.S. AGAIN VOTED IN FAVOR OF THE FY1986-87 BUDGET AND STATED:

> "MORE IMPORTANTLY, THE UNITED STATES DELEGATION WAS PLEASED THAT THE DIRECTOR-GENERAL HAD BEEN ABLE TO COPE EFFECTIVELY WITH PRESSURE FROM OPPOSITE DIRECTIONS; BY HOLDING THE OVERALL BUDGET TO ZERO REAL GROWTH AND BY SHIFTING RESOURCES WITHIN THE BUDGET TO PROVIDE ABOUT 4% GROWTH IN COUNTRY PROGRAMMES, HE HAD BEEN ABLE TO PLEASE EVERYBODY...THE UNITED STATES DELEGATION WAS PLEASED WITH THE PROPOSAL PUT BEFORE THE COMMITTEE, AND MORE PARTICULARLY SO WITH THE PHILOSOPHY EXPRESSED IN THE DIRECTOR-GENERAL'S INTRODUCTION TO THE PROPOSED PROGRAMME BUDGET AND THE CONSERVATIVE AND CAREFUL APPROACHES TO THE FINANCING. FOR THOSE REASONS, (THIS) COUNTRY WOULD VOTE IN FAVOUR OF ADOPTION OF THE APPFOPRIATION RESOLUTION AS PROPOSED, HOPING THAT THE DECISION OF THE HEALTH ASSEMBLY WOULD BE UNANIMOUS." (WHA/38/1985/REL/3, pp. 198).

I WANT TO EMPHASIZE THAT THE U.S. HAS ALWAYS VOTED FOR THE WHO BUDGET. TO APPROVE A BUDGET AND A RATE OF ASSESSMENT, AS THE U.S. HAD DONE IN THE CASE OF WHO, AND THEN TO FAIL TO MEET ITS OBLIGATION Ex Post Facto DOES NOT BODE WELL FOR AMERICAN CREDIBILITY IN INTERNATIONAL ORGANIZATIONS AND UNDERMINES U.S. INTERESTS WHICH ARE REFLECTED BY THE PROGRAM AND POLICIES OF WHO.

THE SEVERE SHORTFALL IN 1986 CONTRIBUTIONS NOW HAS HAD A DEVASTATING EFFECT ON THE ORGANIZATION. EVEN PROGRAMS FUNDED FROM EXTRA BUDGETARY GRANTS DEPEND ON WHO'S INFRASTRUCTURE WHICH IS COMPLETELY FUNDED FROM ASSESSED CONTRIBUTIONS. THUS, WEAKENING THE FRAMEWORK OF THE ORGANIZATION BY WITHHOLDING THE INCOME IT NEEDS FOR ITS DAILY FUNCTIONING HAMPERS THE EFFECTIVENESS OF EXTRA-BUDGETARY PROGRAMS WHICH FIGHT DISEASE -- AIDS, DIARRHEAL DISEASE AND CHILDHOOD DISEASES COVERED BY THE UNIVERSAL CHILDHOOD IMMUNIZATION CAMPAIGN -- AND MAKES WHO'S GOAL OF HEALTH FOR ALL EVEN MORE DIFFICULT TO REACH.

WITH RESPECT TO THE PAN AMERICAN HEALTH ORGANIZATION, THE DEFERRAL OF $12 MILLION OF THE $33 MILLION ASSESSED CONTRIBUTION FOR 1987 OBVIOUSLY CREATES MANAGEMENT DIFFICULTIES. AS AN INTER-AMERICAN AGENCY, DEFERRING THE U.S. CONTRIBUTION HAS ALMOST THREE TIMES GREATER IMPACT THAN IN THE CASE OF THE UNITED NATIONS AND ANY DEFERRAL OBVIOUSLY CREATES IMMENSE CONCERN. HOWEVER, THE CONGRESS HAS SOUGHT IN THE PAST TO RECOGNIZE THIS SPECIAL SITUATION. THE CONGRESS ALSO HAS RECOGNIZED THE IMPORTANT LINKAGES OF PAHO WITH THE CENTERS FOR DISEASE CONTROL (CDC) OF THE U.S. PUBLIC HEALTH SERVICE IN MONITORING AND PREVENTING THE TRANSMISSION OF COMMUNICABLE DISEASE INTO THE UNITED STATES. WITH NEARLY 13 MILLION INDIVIDUAL ENTRANCES AND DEPARTURE FROM THE U.S. TO AND FROM LATIN AMERICA AND THE CARIBBEAN FOR TRADE, TOURISM AND OTHER PURPOSES, THE IMPORTANCE OF THIS REGIONAL HEALTH AGENCY TO THE U.S. IS EVIDENT.

PAHO ALSO OPERATES THE U.S.-MEXICAN BORDER HEALTH PROGRAM WHICH LINKS SOUTHWESTERN STATES IN THIS COUNTRY WITH THEIR COUNTERPART IN MEXICO. IN ADDITION TO ITS COUNTRY OFFICES

THROUGHOUT THE HEMISPHERE, NINE RESEARCH AND TECHNICAL COOPERATION CENTERS WHICH SPECIALIZE IN DIFFERENT SUBJECTS SUCH AS THE NUTRITION INSTITUTE FOR CENTRAL AMERICA AND PANAMA, THE FOOT AND MOUTH DISEASE CENTER IN RIO, AND THE EPIDEMIOLOGY CENTER IN TRINIDAD OFFER THE AMERICANS UNIQUE BENEFITS. LIKE WHO, PAHO HAS SHOWN RESPONSIVENESS TO U.S. CONCERNS BY MAINTAINING ZERO REAL GROWTH OVER RECENT BUDGETS AND HAS REDUCED ITS STAFF POSTS BY ONE-THIRD SINCE 1980. IN TESTIMONY, THE U.S. ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATIONS VOTED THAT PAHO ALSO HAD ACHIEVED **A NEARLY 20%** REDUCTION IN HEADQUARTERS COSTS IN WASHINGTON OVER **RECENT YEARS** WITH THOSE RESOURCES BEING TRANSFERRED TO THE COUNTRIES OF THE REGION. PAHO ALSO HAS ASSURED U.S. MEMBERSHIP IN ITS EXECUTIVE COMMITTEE DURING BUDGET YEARS AND THE U.S. DELEGATON HAS VOTED FOR EACH PAHO BUDGET.

PAHO'S DIRECTOR, WHO ALSO SERVES AS THE WHO REGIONAL DIRECTOR FOR THE AMERICAS, RECENTLY ANNOUNCED CAMPAIGNS TO ERADICATE POLIO IN THE WESTERN HEMISPHERE AS PART OF THE EXTENDED IMMUNIZATION EFFORT, A CAMPAIGN WHICH HAS DRAWN THE SUPPORT OF THE INTER-AMERICAN DEVELOPMENT BANK, ROTARY INTERNATIONAL, UNICEF, AND AID.

PAHO AND WHO TOGETHER REPRESENT THE BEST OF INTERNATIONAL SPECIALIZED AGENCIES. LOOKING IN MORE DETAIL AT THE WORK OF WHO, ONE FINDS, MR. CHAIRMAN, THAT THIS ORGANIZATION PLAYS A PIVOTAL ROLE IN COMMUNICATING AND ENERGIZING THE WORLD TO ACT ON HEALTH CONCERNS. THE WORK OF THE ORGANIZATION HAS BEEN OF DIRECT BENEFIT TO THE U.S. AND THE WORLD.

- WHO'S ERADICAITON OF SMALLPOX SAVES THE U.S. $300 MILLION (IN CURRENT DOLLARS) ANNUALLY BY OBVIATING THE NEED FOR SMALLPOX VACCINATIONS.
- WHO, WHICH ESTABLISHED THE GLOBAL EXPANDED IMMUNIZATION PROGRAM, MANAGES THE UNIVERSAL CHILDHOOD IMMUNIZATION CAMPAIGN, TOGETHER WITH UNICEF, INTENDED TO HELP EVERY COUNTRY ACHIEVE THE GOAL OF COMPLETE ACCESS TO IMMUNIZATION OF CHILDREN BY 1990.

- WHO HAS SUCCESSFULLY INTRODUCED ORAL REHYDRATION THERAPY -- AN INEXPENSIVE AND VERY EFFECTIVE WAY TO PREVENT DEATH IN CHILDREN FROM DIARRHEAL DISEASES.
- WHO HAS BEGUN A MAJOR PROGRAM IN AIDS SURVEILLANCE, RESEARCH, EDUCATION AND PREVENTION. ONLY WHO CAN OVERCOME POLITICAL DIFFERENCES AND SUSPICIONS AND SERVE AS AN INTERNATIONAL CLEARINGHOUSE FOR THE FACTS ON AIDS.
- WHO SUPPORTS RESEARCH TO DEVELOP NEW VACCINES. INFLUENZA SURVEILLANCE BY THE WHO NETWORK HELPS DEVELOP VACCINES AGAINST EACH NEW STRAIN THAT EMERGES.
- WHO'S DISEASE SURVEILLANCE PROGRAM PROVIDES INFORMATION FOR TRAVELERS AND CONTRIBUTES TO THE U.S.'S ABILITY TO PROTECT U.S. CITIZENS AROUND THE WORLD.
- WHO SURVEILLANCE FOLLOWING THE CHERNOBYL NUCLEAR DISASTER HELPED PROTECT EUROPE, AND CONTRIBUTED INFORMATION ON HOW TO DEAL WITH FUTURE ACCIDENTS.
- WHO SUPPORTS THE DEVELOPMENT OF COST-EFECTIVE MEDICAL TECHNOLOGY. THE AVAILABILITY OF A $35,000 BASIC RADIOLOGIC SYSTEM DEVELOPED BY WHO HAS MADE GOOD X-RAY SERVICES POSSIBLE AT A REASONABLE PRICE.
- WHO HELPS MEMBER COUNTRIES WITH A WIDE RANGE OF HEALTH PROGRAMS, INCLUDING: ALCOHOL AND DRUG ABUSE PREVENTION; DRINKING WATER AND SANITATION; CARDIOVASCULAR DISEASE PREVENTION; CANCER RESEARCH, PREVENTION AND TREATMNET; AND FAMILY PLANNING.

ONCE AGAIN, MR. CHAIRMAN, LET ME REPEAT THAT WE HOPE THIS COMMITTEE AND THE CONGRESS THIS YEAR CAN ACHIEVE:

- **THE REVERSAL OF THE DEFERRAL UNTIL OCTOBER 1, 1987 OF THE $36 MILLION IN FY87 APPROPRIATIONS FOR WHO AND $12 MILLION FOR PAHO AS REQUESTED IN THE ADMINISTRATION'S SUPPLEMENTAL FY87 APPROPRIATIONS REQUEST;**
- **AN ADDITIONAL $15.7 MILLION IN FY87 SUPPLEMENTAL APPROPRIATIONS TO MAKE UP FOR THE SHORTFALL IN THE**

PAYMENT OF THE U.S. ASSESSED CONTRIBUTION TO WHO;

- THE REPEAL (OR AT LEAST MODIFICATION) OF THE KASSEBAUM-SOLOMON AMENDMENT IN ORDER TO PERMIT FULL FUNDING FOR WHO FY FY87 AND FY88, TO THE LEVEL OF U.S. TREATY OBLIGATIONS; AND,
- FULL FUNDING FOR PAHO IN FY88.

THANK YOU FOR ALLOWING US THE OPPORTUNITY TO TESTIFY. I WILL BE PLEASED TO ANSWER ANY QUESTIONS.

6512 Lakeview Dr.
Falls Church, Virginia 22041

RECEIVED
APR 15 1987
DEANS' OFF
HYGIEN

The Honorable George P. Shultz
Secretary of State
Main State Department Bldg.
2201 C Street N.W.
Washington, D.C. 20520

APR 14 1987

Dear Mr. Secretary:

We, the former Surgeons General of the U.S. Public Health Service, are deeply concerned over the serious financial situation confronting the World Health Organization. As you know, the U.S. has only paid 10 million dollars of its $61.7 million 1986 assessed contribution. While we have agreed to pay an additional $36 million in October 1987, this deferral and the shortfall have left the Organization in an unprecedented financial crisis. This has occurred despite past and current actions taken by WHO to meet the basic goals of the Kassebaum amendment, and despite its very modest budgets which have been supported by the United States as prudent and responsive to both international health needs and the economic environment.

For over 30 years, for six different administrations, we have represented our country at the governing body meetings of this Organization We are familiar with its programs, the important benefits to the U.S. and all member countries, as well as some of its shortcomings. While we may differ about some details, we are in unanimous agreement that a strong world health body is absolutely essential for the well being of the world community. The present budgetary shortfall is already having serious effects on existing programs, and on the Organization's ability to meet global needs for newly emerging health problems such as AIDS.

We are also deeply concerned by the deferral of payment of one third of the U.S. contribution to the Pan American Health Organization (PAHO) until October 1, 1987. PAHO has always offered unique benefits to the U.S. in its collaboration with our Public Health Service in epidemiological monitoring throughout Latin America and the Caribbean. Its responsiveness to U.S. budgeting concerns has brought it public commendation in testimony by your own Department.

The Administration and Congress must take the following steps as soon as possible:

- The deferral of $36 million for WHO and $12 million for PAHO until October 1987 must be reversed.
- $15.7 million must be appropriated in the FY 87 supplemental appropriation bill so the U.S. can meet its full contribution for 1986, and
- Sufficient funds must be included in the FY 1988 appropriation bill so the U.S. can meet its full assessed contribution for 1987 to both WHO and PAHO.
- The Kassebaum amendment must be repealed.

We believe the consequences for program implementation and indeed, the continuing viability of WHO itself are threatened. Immediate definitive action is required so that all member countries share the benefits of the WHO, and so that the U.S. can again assume its leadership role in international health.

Sincerely,

Leonard A. Scheele M.D.
Leonard A. Scheele, M.D.

Leroy E Burney
Leroy E. Burney, M.D.

William H. Stewart
William H. Stewart, M.D.

Jesse L. Steinfeld, M.D.

S. Paul Ehrlich Jr., M.D.

Julius B Richmond
Julius B. Richmond, M.D.

cc: Otis E. Bowen, Secretary
Department of Health and Human Services

Senator Ernest F. Hollings
Senator Edward M. Kennedy
Senator Clairborne Pell
Senator Joseph Biden
Senator Bob Kasten, Jr.
Senator Paul Sarbanes
Senator Christopher J. Dodd
Senator John F. Kerry
Senator Daniel P. Moynihan
Senator Paul Simon
Senator Terry Sanford
Senator Brock Adams
Senator Richard Lugar
Senator Nancy Kassebaum
Senator Rudy Boschwitz
Senator Larry Pressler
Senator Daniel Evans
Senator Mitch McConnell
Senator Daniel K. Inouye
Senator Dale L. Bumpers
Senator Lawton Chiles
Senator Frank Lautenberg
Senator Jim Sasser
Senator Warren Rudman
Senator Edward Zorinsky
Senator Ted Stevens
Senator Lowell P. Weicker
Senator Mark O. Hatfield

Representative Henry A. Waxman
Representative Dante B. Fascell
Representative Neal Smith
Representative David R. Obey
Representative Dan Mica
Representative Gus Yatron
Representative Vic Fazio
Representative Barbara Boxer
Representative Tony P. Hall
Representative George Miller
Representative Olympia J. Snowe
Representative George E. Brown, Jr.
Representative Fortney H. Stark
Representative Mel Levine
Representative Howard L. Berman
Representative Alan Cranston
Representative Benjamin A. Gilman
Representative Jim Leach
Representative Gerald B.H. Solomon
Representative Christopher H. Smith
Representative Toby Roth

cc: Representative Bill Alexander
Representative Joseph D. Early
Representative Bernard J. Dwyer
Representative Bob Carr
Representative Alan B. Mollohan
Representative Ralph Regula
Representative Harold Rogers
Representative Jim Kolbe

bcc: C. Everett Koop, Surgeon General, U.S. Public Health Service
Halfdan T. Mahler, Director General WHO
Carlyle Guerra de Macedo, Director PAHO/WHO
Anthony Robbins, American Public Health Association
Donald Henderson, Dean School of Public Health, Johns Hopkins Univ.
Michael K. Gemmell, Executive Director, Ass. of Schools of Public Health
Richard C. Gilbert, American Public Health Association

GEORGETOWN UNIVERSITY
WASHINGTON, D.C. 20057

May 5, 1987

The Honorable Ernest F. Hollings, Chairman
Subcommittee on Commerce, Justice, State, the
Judiciary and Related Agencies
Committee on Appropriations
United States Senate
S-146A, Capitol Building
Washington, D. C. 20510

The Honorable Warren B. Rudman
United States Senate
SD-152 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Chairman Hollings and Senator Rudman:

I am Father T. Byron Collins, S.J., Special Assistant to President Healy of Georgetown. I write again this year on behalf of the coordinated, national Law-Related Education Program.

You and the Subcommittee have been most supportive of this worthwhile delinquency prevention effort. Most recently, the Committee's report for fiscal year 1987 appropriations noted: "[T]he Committee expects the Law Related Education Program to be maintained at a level of not less than $2,200,000." S. Rep. No. 425, 99th Cong., 2d Sess. 45 (1986). In previous years, the Committee has also included express language in its reports on appropriations directing funding for this effective program. S. Rep. No. 150, 99th Cong., 1st Sess. 42 (1985); S. Rep. No. 206, 98th Cong., 1st Sess. 45 (1983).

Evaluations have shown that law-related education can reduce juvenile delinquency when properly implemented. The Office of Juvenile Justice and Delinquency Prevention has noted that evaluations of the Law-Related Education Program have been "encouraging . . . confirming previous findings that such education serves as a significant deterrent to delinquent behavior." U.S. Department of Justice, OJJDP, Eighth Analysis and Evaluation of Federal Juvenile Delinquency Programs 69 (1985). Among the reported recommendations of the Coordinating Council on Juvenile Justice and Delinquency Prevention in recent years was one encouraging "enhancement of law-related education as a technique to enhance good citizenship and reduce delinquent behavior among America's youth." Id. at 32.

> Maintaining our democracy is not an easy task. Only through education can we hope to teach our young people to be effective, law-abiding, and participating citizens. Law-related education offers a promising vehicle for achieving these goals.

U.S. Department of Justice, OJJDP, Annual Report of the Law-Related Education Program May 1984 to April 1985 i (1986).

Ensuring proper implementation as these programs are replicated across the country is most important and best accomplished by those whose vast experience has been demonstrated by the development of effective curriculum materials and implementation of successful projects. In past years the Program, from kindergarten through twelfth grade, had been able to support intensive activities in only a handful of States and technical assistance efforts for the rest of the Nation. In the last two years, with your support, the intensive, coordinated, national Law-Related Education Program has grown from 11 target States to 25. We have plans to add an additional nine States during 1987-88, with four of the nine beginning full training and dissemination activities.

With projects now possible throughout the country, it is most important that this delinquency prevention strategy be effectively coordinated, as it has been most successfully through the Law-Related Education Clearinghouse at the College of Criminal Justice at the University of South Carolina in Columbia, South Carolina.

In school year 1985-86, over 645,000 youngsters directly benefitted from law-related education training. Over 11,000 teachers from over 330 school districts were trained, over 1,100 educational leaders attended leadership training workshops and over 3,300 State and local leaders participated in public and private sector partnership conferences. The coordinated, national program has exceeded its performance commitments by more than 50 percent. This year participation could expand even more in each of these activities. By the end of fiscal year 1987, if the earmarked appropriations are made available, additional growth could result in close to one million juveniles participating in Law-Related Education Program activities. Each federal dollar is leveraged by several times as much in private and local contributions. As States learn to utilize their formula grant funds under the new authorizing legislation, each dollar of special emphasis delinquency prevention funding for coordination and to ensure effective implementation will further increase in value.

Such activities cannot succeed, however, if not given an opportunity to take root and grow. Public-private partnership conferences and teacher training activities have been organized and begun, but new jurisdictions are being added each year and local implementation takes time and commitment. In order to succeed, the coordinated, national Law-Related Education Program needs stability. States, which are devoting their formula grant funding, and local school and justice system personnel, who are devoting their time, must be assured that their activities will not be abandoned by the national effort and that the $2.2 million federal funding on which plans for this year have been predicated will be made available through the Office of Juvenile Justice and Delinquency Prevention.

With a request for no juvenile justice appropriations in fiscal year 1988 by the Administration and the Attorney General's recently testifying before you, again, that he is proposing to terminate juvenile justice funding, the Program needs the reassurance that the Congress will not abandon this effort. At a time when national and world events demonstrate each day the value of a citizenry knowledgeable in democratic principles and committed to the respect for law that is the basis for this country's enduring stability, the Program provides vital opportunities for our Nation's youth. That this year we begin to commemorate the bicentennial of our Constitution and Bill of Rights makes these efforts all the more timely and significant.

I respectfully request that the Committee act to ensure that the intended fiscal year 1987 appropriation be made available and that fiscal year 1988 funding of the Law-Related Education Program be earmarked at the $2.4 million level to accommodate the expansion of the Program into new jurisdictions. Funding the coordinated, national Law-Related Education Program, coordinated by those with the expertise necessary to ensure proper implementation, is investing in a law-abiding society and provides training for responsible members of society for our future. I urge your continued support and look forward to working with you and your staff in this year's appropriations process.

Sincerely yours,

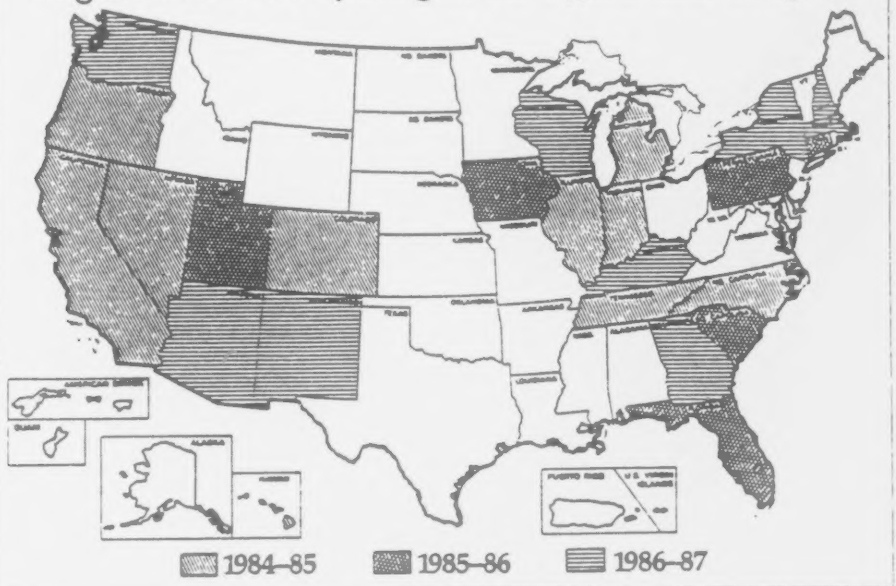
T. Byron Collins

T. Byron Collins, S.J.

Enclosures

Advancing Law-Related Education in the Schools

Target States Participating in the OJJDP LRE Program



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UPDATE

Annual Report of the Law-Related
Education Program

December 1986

There are now 25 OJJDP Target Sites

- Target Sites for 1985-86:

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Impact of OJJDP Training and Dissemination Program (4/84 to 8/86)
(Promised impact in parentheses)

1. School Districts Participating - 330 (180) (16,000 in the U.S.)
2. Students Taught - 644,666 (270,000)
3. Public/Private Partnership Conferences

• Events	37	(18)
• Participants	3,372	(1,800)
• Hours	19,860	(12,800)

4. Training of Trainers Seminars

• Events	62	(18)
• Trainees	1,116	(360)
• Hours	17,377	(5,400)

5. In-Service Workshops

• Events	374	(180)
• Teachers, Resource Persons	11,403	(4,500)
• Hours	73,834	(45,000)

U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention

Annual Report of the Law-Related Education Program

May 1984 to April 1985

Dear Reader:

It is my pleasure to introduce you to exciting programs that are making a difference in the lives of young people in communities across the Nation. In this annual report you will read how law-related education is helping to reduce delinquent behavior in young people and create better citizens.

Law-related education (LRE) teaches elementary and secondary students about the foundations of our free democratic society and their rights and responsibilities as citizens. In LRE classes, students are actively engaged in participatory learning experiences that foster social responsibility and personal commitment to the public good. Through LRE, teachers, lawyers, judges, juvenile officers, legislators, and other law-related professionals, work in partnership to increase understanding about the law and legal system among young people.

Since 1978, the Office of Juvenile Justice and Delinquency Prevention has lent support to the cooperative efforts of the five national law-related education projects outlined in this Report. Their task is to promote the development and institutionalization of LRE throughout the country. As this program continues to grow and expand, we seek the ongoing commitment of a broad spectrum of the community to ensure the successful implementation of LRE programs nationally.

Maintaining our democracy is not an easy task. Only through education can we hope to teach our young people to be *effective*, *law-abiding*, and *participating* citizens. Law-related education offers a promising vehicle for achieving these goals.

As we approach the bicentennials of our Constitution and Bill of Rights in 1987 and 1991, we can perhaps make no greater contribution to the principles that these great documents represent than through the targeted, cooperative efforts of law-related education.

Alfred S. Regnery

Alfred S. Regnery
Administrator
Office of Juvenile Justice and Delinquency
Prevention, U.S. Department of Justice

Executive Summary

After two years of support for research and development testing the effectiveness of law-related education (LRE), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) carried out the first year of a coordinated national training and dissemination effort (5/1/84 - 4/30/85) through five national nonprofit organizations:

- American Bar Association Special Committee on Youth Education for Citizenship, Chicago, Illinois.
- Center for Civic Education/Law in a Free Society, Calabasas, California.
- Constitutional Rights Foundation, Los Angeles, California, and Chicago, Illinois.
- National Institute for Citizen Education in the Law, Washington, D.C.
- Phi Alpha Delta Public Service Center, Bethesda, Maryland.

Model LRE programs were strengthened and expanded in 11 target States (California, Colorado, Florida, Hawaii, Illinois, Indiana, Michigan, Nevada, North Carolina, Oregon, and Tennessee). To reach out to the other States, we developed attractive informational packages about LRE and began a multifaceted marketing program designed to win support and participation from national education and justice organizations.

According to an assessment, we exceeded by more than 40 percent the program's ambitious goals for training teachers and resource persons. Most importantly, nearly 300,000 students will learn about the law from persons trained under this program.

For further information, contact the program coordinator: Lee Arbetman, Suite 401, 605 G Street NW, Washington, DC 20001. Telephone: (202) 624-8217.

Law-Related Education Program

Introduction and Background

From May 1, 1984, to April 30, 1985,* the U.S. Department of Justice carried out an ambitious program bringing education about law and juvenile justice to schools throughout the country. More than 170 school districts were reached in 11 target States; as a result, thousands of key teachers and community volunteers were trained. The effort, sponsored by the Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP), touched every State through other components of the program.

This report summarizes a busy year. The organizations conducting OJJDP's 1984-85 national training and dissemination program were:

- American Bar Association(ABA) Special Committee on Youth Education for Citizenship, Chicago, Illinois.
- Center for Civic Education/Law in a Free Society (CCE/LFS), Calabasas, California.
- Constitutional Rights Foundation (CRF), Los Angeles, California, and Chicago, Illinois.
- National Institute for Citizen Education in the Law (NICEL), Washington, D.C.
- Phi Alpha Delta (PAD) Public Service Center, Bethesda, Maryland.

In addition, the Center for Action Research and the Social Science Education Consortium, both of Boulder, Colorado, principal co-investigators during an earlier evaluation stage of the effort, received subcontracts through NICEL to provide technical assistance during this past program year.

A brief background statement will help put this year's accomplishments in perspective. Since 1978, the Office has funded a national LRE effort. During Phase I of the program (1978-81), the national projects explored ways of promoting LRE in States and localities throughout the country. Working closely with legal, educational, governmental, and community groups, the projects helped initiate or strengthen LRE programs in all parts of the country.

OJJDP also conducted an intensive evaluation during that time. The evaluation was designed to identify those characteristics of LRE that contributed most to reducing delinquent behavior in young people. The evaluation revealed that effective teaching about the law and legal process could improve students' attitudes, help reduce delinquent behavior, and improve citizenship knowledge and skills.

Phase II (1981-83) built upon the exciting results found in Phase I. The program's emphasis shifted to refining the evaluation and making LRE a permanent part of school programs.

While the projects continued to offer technical assistance to States and localities, OJJDP's major goals for the second phase were: (1) to determine how to make LRE a permanent part of young people's educational experience (i.e., achieving institutionalization of school-based programs); (2) to maximize the involvement and support of professional and community groups; and (3) to expand the LRE evaluation by involving a larger sample of students and additional grade levels.

The 1984-85, Phase III, program emphasizes training and dissemination--reaching out to more people in more States. Since the national projects have learned how to carry out high-quality programs and mobilize grassroots community support, a relatively small Federal contribution will secure a substantial volunteer effort from the private sector as well as State and local government funding.

The 1984-85 program has been built around an OJJDP-approved "Master Plan for LRE." The plan involves each of the organizations, to varying degrees, in each of seven components of the training and dissemination effort. The seven components are:

- Target State Training and Technical Assistance
- Marketing and Support
- Informational Resources
- Program Development
- Nontarget State Assistance
- Assessment
- Coordination and Management

Target State Training and Technical Assistance: Developing Model Programs

The centerpiece of the 1984-85 effort was the development, expansion, and strengthening of model LRE programs in 11 target States. We provided substantial onsite consulting to each State as part of a customized technical assistance package designed to meet the needs of participating communities. These States and their coordinators were:

---

*Data were collected in the States through July 31, 1985, in order to include summer training sessions conducted as part of this program.

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Peabody Center for Economics
and Social Studies Education
of Vanderbilt University
Box 320
Nashville, TN 37203
(615) 322-8090

The year-long effort began when teams from each of the target States met in Washington, D.C., in May 1984 for a three-day orientation conference. Working with the staffs of the national projects and OJJDP, the teams drafted plans of action and budgets. After consulting with planning committees in the States and carrying on further discussions with national project staff, they finalized their plans. Each target State received a $10,000 subcontract to help conduct their activities. Most raised between $40,000 and $50,000 in matching money to complement the Federal seed funds. Appendix A summarizes funds raised in each State. Appendix B lists the private sector supporters for LRE.

Three major activities occurred in each target State: (1) one or more grassroots public-private partnership conferences; (2) a training of trainers seminar; and (3) a series of inservice workshops for teachers and resource persons.

The Public-Private Partnership Conference (PPPC)

The PPPC's were designed to forge (or in some instances strengthen) alliances between public sector participants in LRE (teachers, administrators, elected officials, judges, and police) and private sector participants (lawyers, parents, community groups, and members of the business community). Most conferences were full-day meetings in the State capital or another large city. They offered workshops on various law-related curricular approaches, panels by distinguished legal authorities, and exhibits of exemplary curriculum materials. Many included keynote addresses by statewide officials, which gained LRE wide visibility.

Program Highlights

Keynote speakers at the public-private partnership conference included:

- Illinois Governor James Thompson
- Indiana Governor Robert D. Orr
- Florida Attorney General Jim Smith
- California Superintendent of Public Instruction Bill Honig

[illegible]

The conferences were attended by teams of 7 to 10 persons from each community participating in the year's activities. A "public-private" team might include an elementary school teacher and principal, a high school teacher and principal, the superintendent of the school district, a judge, the president of the local bar association, the chief of police, the executive director of the local chamber of commerce, and the president of the PTA. Participants were extremely enthusiastic about the conferences.

[illegible]

At the PPPC's, each community made plans for its LRE activities for the year. The plans included: inservice training of at least 10 hours for no fewer than 25 teachers and resource persons (this was a condition of participation in the program); presentations before local groups to develop awareness of and support for LRE; special events, such as mock trial competitions; and steps to involve school administrators and school boards in making LRE a permanent part of the system's curriculum.

Training of Trainers Seminars

To conduct high-quality programs that would have a lasting impact on communities, it was necessary to increase local capacity to conduct programs. As a condition of participation in the program, each team had to designate one or two persons from its PPPC team to assume leadership and training positions back in their community. Most of these persons were experienced LRE teachers or curriculum administrators, although some lawyers and police chiefs served as local trainers.

The local trainers were brought together at least once early in the program year and provided with training by national project staff and statewide target State coordinators on the fine points of designing, implementing, supporting, evaluating, expanding, and institutionalizing LRE programs. Back in their communities, the local trainers organized and conducted the inservice training sessions (sometimes with onsite assistance from national project staff) and continued the process of nurturing the public-private partnerships.

"[illegible] training of [illegible] seminar has provided us with an invaluable resource: local program developers in communities throughout Michigan. We're going to continue to support this effort and to add new trainers using our own [illegible] in 1985-86."

—[illegible], Michigan LRE Coordinator

Inservice Training

Providing better educational programs for children requires training and support services for teachers and administrators and, in the case of LRE, for the volunteer resource persons from the justice system who provide a critical link in the instructional program. In each target State, 10 or more hours of training were provided to 25 or more persons at 10 satellite locations. Sessions included: the rationale for teaching young people about the law, lessons using various curriculum materials and instructional strategies, substantive sessions on the law, and a close look at the curricular fit between LRE and the courses already mandated in their school systems. Participants also received guidance from local trainers, statewide coordinators, and national project staff as they drafted lesson plans and practiced new instructional methods.

Program Highlights

- More than 2,000 persons attended 21 public-private partnership conferences in the 11 target sites.
- More than 400 educators attended the training of trainers seminars.
- More than 4,000 teachers and resource persons received inservice training.

(These data are summarized in Graphs I through IV.)

The National LRE Leadership Seminar

In addition to taking training and technical assistance to the target States, OJJDP sponsored one national training event. The eighth annual National LRE Leadership Seminar was held in Washington, D.C., in November in conjunction with the annual meeting of the National Council for the Social Studies. This seminar was initiated the first year of OJJDP funding and has proved to be one of the most important annual LRE events--approximately 150 leaders from across the Nation attend. The seminar is organized by the American Bar Association, and all national projects participate.

Marketing and Support: Making Sure Our Message Is Heard Throughout the Land

The LRE master plan calls for the identification of a select group of national educational, justice, and civic organizations to increase their awareness of and support for LRE. Because these organizations have diverse structures and functions, we varied our approach for each organization, selecting from the following options: securing resolutions of support; making presentations at annual meetings; preparing articles for publication in newsletters, magazines, or journals; encouraging the circulation of statements of support from national offices to State and local affiliates in the target States; and providing workshops at training institutes. While we worked with these organizations at the national level, we also encouraged our State coordinators to work with their State and local affiliates. This two-pronged approach broadened and deepened the natural community support base that exists for teaching young people about the law.

Program Highlights

By April 30, 1985, the following education, justice, and civic organizations had been involved in marketing and support efforts:

- American Bar Association
- American Justinian Society of Jurists
- Conference of Chief Justices
- International Association of Chiefs of Police
- International Juvenile Officers Association
- National District Attorneys Association
- National Association of Elementary School Principals
- National Association of Secondary School Principals
- National School Boards Association
- National Sheriffs' Association

"The Conference of Chief Justices recognizes the value of law-related education and encourages all States to implement such curriculum, to the end that our youth [illegible] national heritage [illegible] individual rights and responsibilities [illegible] understood."

—From a resolution of support adopted by the Conference of Chief Justices [illegible] of the National Center for State Courts

Informational Resources: Packaging LRE for Public Consumption

To support the dissemination effort, the master plan calls for the development of a public information brochure. This attractive three-color brochure provides the public with a practical, straightforward explanation of LRE--what it is, why it should be supported, and what it can do for the

Nation's youth--along with resolutions of support from leading national organizations. In addition to providing the names and addresses of the grantees, the brochure includes the toll-free number of the National Criminal Justice Reference Service, where staff provide basic information on LRE and refer callers to national project staff. More than 15,000 copies of the brochure have already been distributed.

In addition to the brochure, each grantee publishes its own brochure and newsletter, assuring considerable outreach. The American Bar Association's Special Committee on Youth Education for Citizenship continues its leadership in this area with the publication of the award-winning magazine, *Update on Law-Related Education*, as well as its newsletters, *LRE Report* and *LRE Project Exchange*. Both newsletters are distributed free of charge to a broad national audience. *LRE Report* carries news of LRE programs across the Nation; the spring issue regularly features a catalog of summer institutes for teachers. The *Exchange*, which is targeted to project leaders, focuses on topics of particular interest to program directors. For example, two recent issues provided guidelines for involving the community in LRE and discussed LRE's contributions to the "excellence in education" movement.

During the project year, the ABA/Youth Education for Citizenship staff made considerable progress toward completing a computerized data base that will contain current information about LRE programs, thus greatly enhancing our national clearinghouse services.

Throughout this year, ABA and Social Science Education Consortium (SSEC) staff worked to coordinate the informational resources of the grantees, compiling standardized packets so that each type of requester--teachers, attorneys, law enforcement personnel, and parents--would get a useful picture of the LRE field. SSEC staff collected each project's curriculum, annual reports, brochures, newsletters, and technical assistance papers for submission to SSEC's ERIC Clearinghouse, ensuring broad dissemination of the OJJDP effort.

Program Development: Opening a New LRE Horizon for Juveniles in Correctional Institutions

Because the thrust of the year's effort was to disseminate proven models and materials, program development was of necessity a small--but exciting--component of the overall program. Under this component, we piloted LRE programs in juvenile corrections settings. These pilot efforts took place in California, Texas, and North Carolina. Corrections officials were very supportive of the pilot efforts and have encouraged us to expand our work in this area. In addition, the U.S. Department of Education has asked us to make a series of presentations on this topic at a national conference they are sponsoring on corrections education in the fall of 1985.

Nontarget States: Reaching Beyond the Model Programs

We also serve a broad national audience. Each grantee disseminates newsletters, responds to clearinghouse requests, and provides technical assistance by phone or correspondence. There was limited onsite assistance outside of the designated target States. During the program year, educators and justice system officials in New Mexico, Missouri, Oklahoma, South Carolina, New Jersey, and New York paid travel and expenses for grantee staff who provided them with specific components of the program for target States.

The national projects also made trips under this component to several nontarget State locations (Georgia, Iowa, Pennsylvania, Puerto Rico, and Connecticut) to determine if they could benefit from participation in the target State program in 1985-86.

Assessment: Determining How Well We Did

A formal evaluation of the training and dissemination program was beyond the resources available to OJJDP in 1984-85. However, under the assessment component, we (1) gathered data on all target State activities and (2) conducted indepth telephone interviews with the target State coordinators to determine how the design and operation of the program could be improved for 1985-86.

Through this process, we got feedback from (1) target State coordinators, their staff members, consultants, and advisory committees; (2) participating school districts and their local LRE leaders; and (3) persons attending the public-private partnership conferences, training of trainers seminars, and inservice workshops.

The indepth telephone interviews confirmed that the State coordinators believed that the program was useful and that our technical assistance was invaluable. Coordinators agreed that a lower level of target State support should continue into a second year, with greater flexibility permitted in designing the continuation programs.

> [illegible]
>
> [illegible]

> [illegible]
>
> [illegible]

Coordination and Management: Keeping the Ship on Course

To assure efficient coordination, we have an executive committee comprised of one voting member from each of the five grantees as well as a representative of OJJDP. The committee meets at least quarterly. Representatives from the two subcontractors have at times been invited to attend, make presentations, and discuss issues, but not vote.

In charge of day-to-day management of the overall program is the deputy director of the National Institute for Citizen Education in the Law, Lee Arbetman. As coordinator of the national program, he represents the project to OJJDP and other national organizations, plans for and facilitates meetings of the executive committee, circulates appropriate information to members of the committee and to the target State coordinators, and assures that the various components of the project operate in a timely and efficient manner.

The Plan for 1985-86

Based on the success of the 1984-85 training and dissemination program, OJJDP has instructed the grantees to continue to support and provide assistance to the original target States and to add new States within the limits of the funding available to the grantees. Before the end of the first year, the national project received commitments of participation from six new States. These States and their coordinators are:

Connecticut

Denise Merrill
LRE Coordinator
State Dept. of Education
Box 2219
Hartford, CT 06145
(203) 248-8827

Florida

Annette Pitts
Executive Director
The Florida Law-Related Education Association, Inc.
The Supreme Court Building
Tallahasee, FL 32301
(904) 681-6150

Iowa

Deborah Strigenz
Coordinator
Iowa Law-Related Education
Drake Law School
Drake University
Des Moines, IA 50311
(505) 271-2233

Pennsylvania

Beth E. Farnbach
Executive Director
Law, Education and Participation
Temple University School of Law
1719 North Broad Street
Philadelphia, PA 19122
(215) 787-8948

South Carolina

Jack C. Hanna
Project Director
Ways of the Law
South Carolina Department
of Education
2712 Millwood Avenue
Columbia, SC 29250
(803) 758-7301

Utah

Nancy N. Mathews
Project Director
Utah Law-Related Education
Project
250 East Fifth South
Salt Lake City, UT 84111
(801) 533-5891

In addition to continuing the other components of the program, the project plans to increase its emphasis on informational resources by producing a filmstrip or slide show and an expanded project brochure.

For additional information on this project, contact:

Lee Arbetman
Coordinator
Suite 401
605 G Street NW.
Washington, DC 20001
(202) 624-8217

Appendix A

Summary of Funds Raised in 1984–85

Target State Financial Support

State	a. OJJDP	b. School Districts	c. Other Public Sector	d. Private Sector	e. non-OJJDP (b+c+d)	TOTAL (a+e)
Florida	10,000	11,023	9,864	10,600	31,487	41,487
Colorado	10,000	17,280	-----	10,000	27,280	37,280
Illinois	10,000	36,080	4,900	16,100	57,080	67,080
Michigan	10,000	4,500	-----	58,576	63,076	73,076
Indiana	10,000	6,340	6,400	147,650	160,390	170,390
Hawaii	10,000	72,700	26,000	4,000	102,700	112,700
North Carolina	10,000	10,598	-----	-----	10,598	20,598
Tennessee	10,000	19,320	-----	16,840	36,160	46,160
Nevada	10,000	23,302	31,600	3,450	38,350	68,350
Nine State Totals*	90,000	201,141	78,844	267,216	547,121	637,121
Average Contribution by Category	10,000	22,349	8,760	29,690	60,791	70,791
Projected Contributions for All 11 States**	120,000	268,188	105,120	356,280	729,492	849,492

* Information had been received from 9 of the 11 target States, as of January 6, 1986.

** California received $20,000 and was required to conduct twice as much training activity.

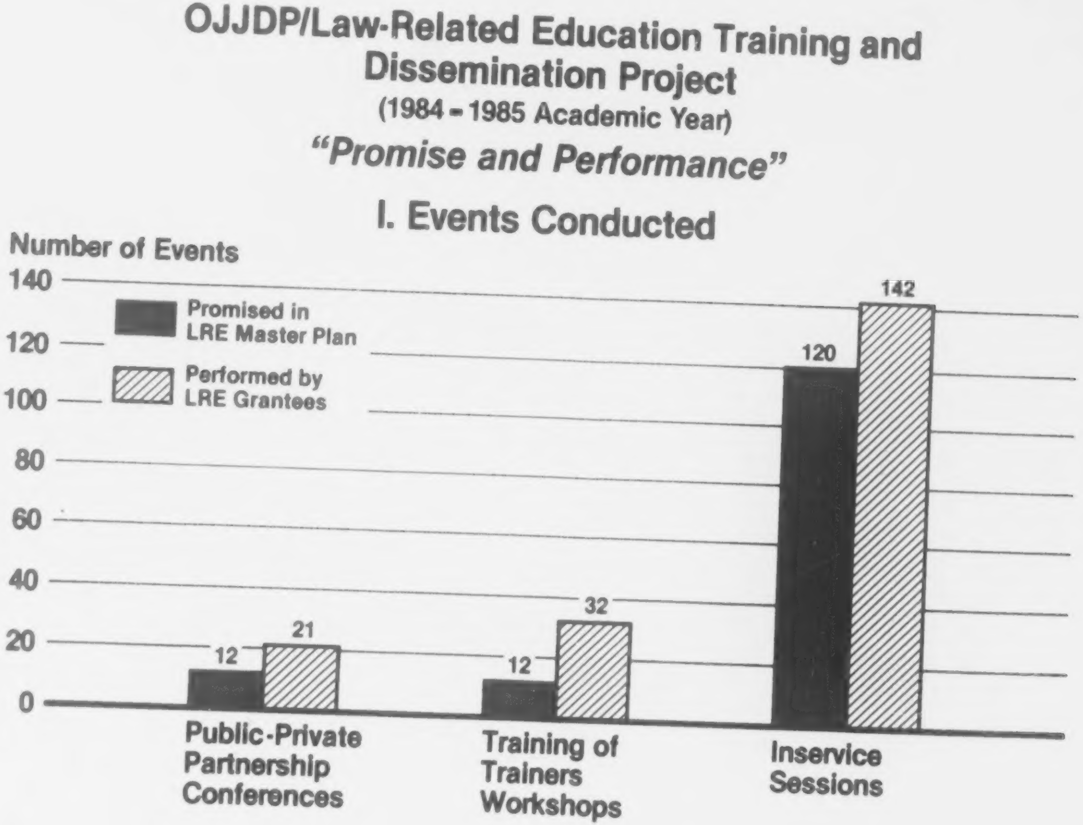
Appendix B

Private Sector Support for This Program

The national nonprofit organizations conducting the training and dissemination program gratefully acknowledge the invaluable financial support received from the following private-sector organizations (this is a partial list).

American Medical Int'l, Inc.
Arthur Andersen & Company
Atlantic Richfield Company
AT&T Foundation
Bank America Foundation
Broadway Department Stores
California Community Foundation
Chevron, U.S.A.
Exxon Corporation
FMC Corporation
First Interstate Bank
General Telephone Co. of California
Getty Oil Company
Gilmore Foundation
G.W. Jenkins Foundation
Hechinger Foundation
International Paper Company Foundation
Lazard Freres & Co.
Lockheed Aircraft Corporation
Los Angeles County Bar Foundation
Los Angeles Dodgers, Inc.
Mobil Corporation
Molner Foundation
Pacific Bell
Pacific Mutual Life Insurance
Paramount Pictures Corporation
Plitt Theatres
Prudential Insurance Co. of America
Rotary Club of Los Angeles
Santa Anita Foundation
Times Mirror Foundation
Times Publishing Co.
Transamerica-Occidental Life Insurance Company
TRW
Satellite Business Systems
Texaco Philanthropic Foundation
Wasserman Foundation
West Publishing Company
W.M. Keck Foundation

Graph I
Events Conducted



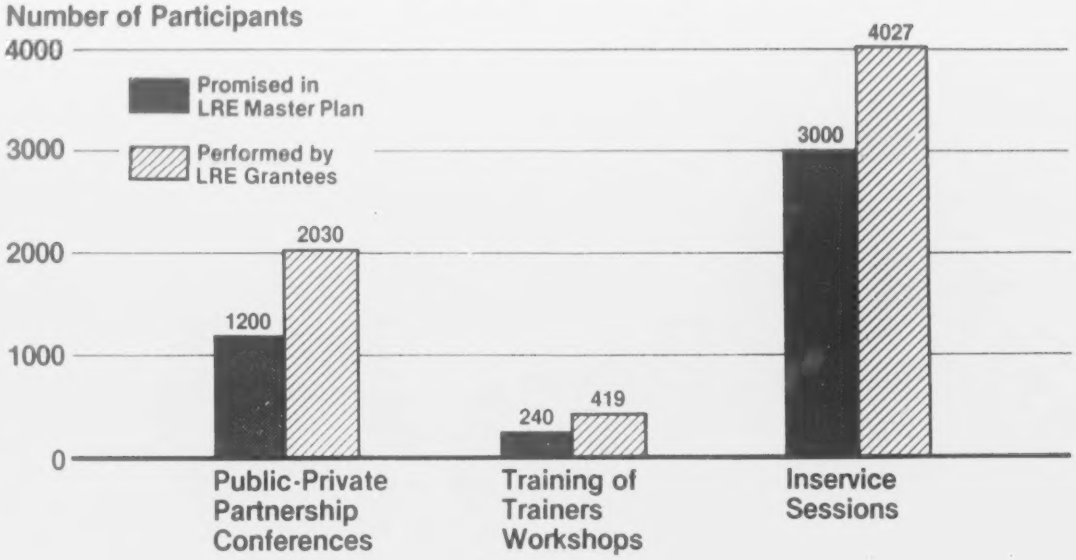
Graph II
Participants Attending Events

OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

"Promise and Performance"

II. Participants Attending Events



Graph [illegible]

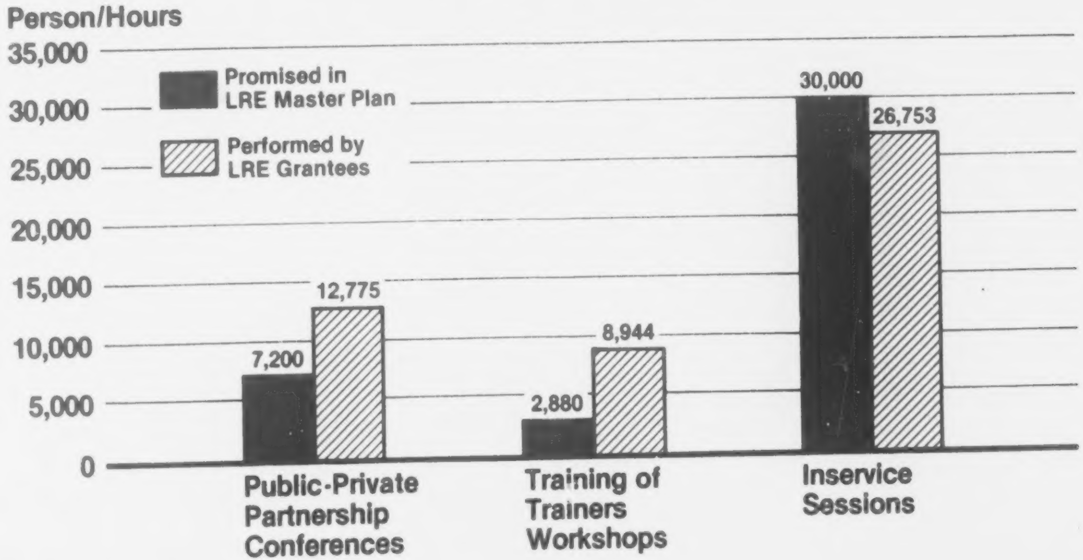
Hours of Training

OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

“Promise and Performance”

III. Hours of Training



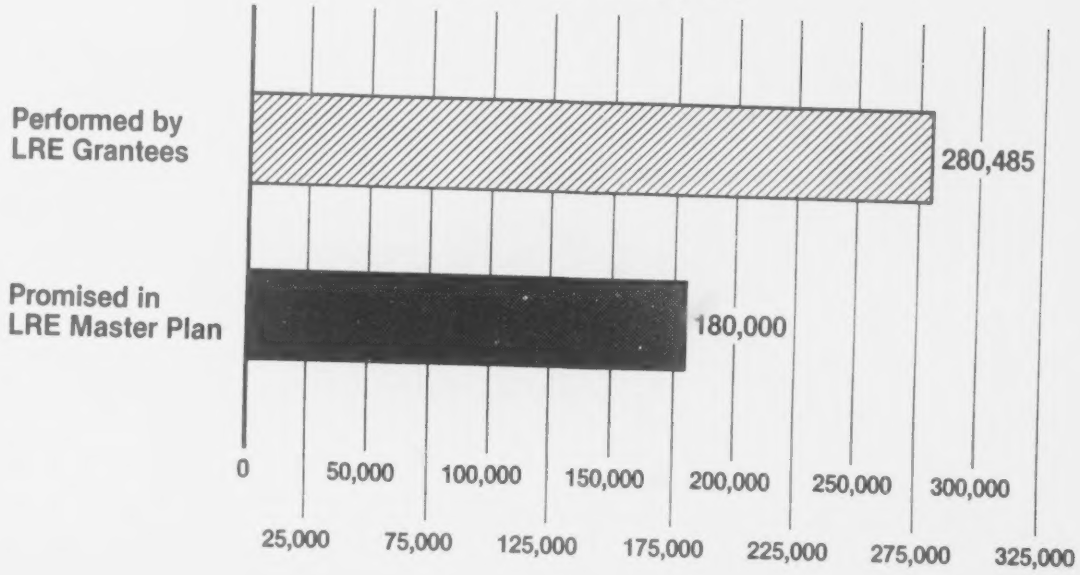
Graph IV
Impact on Students

OJJDP/Law-Related Education Training and Dissemination Project

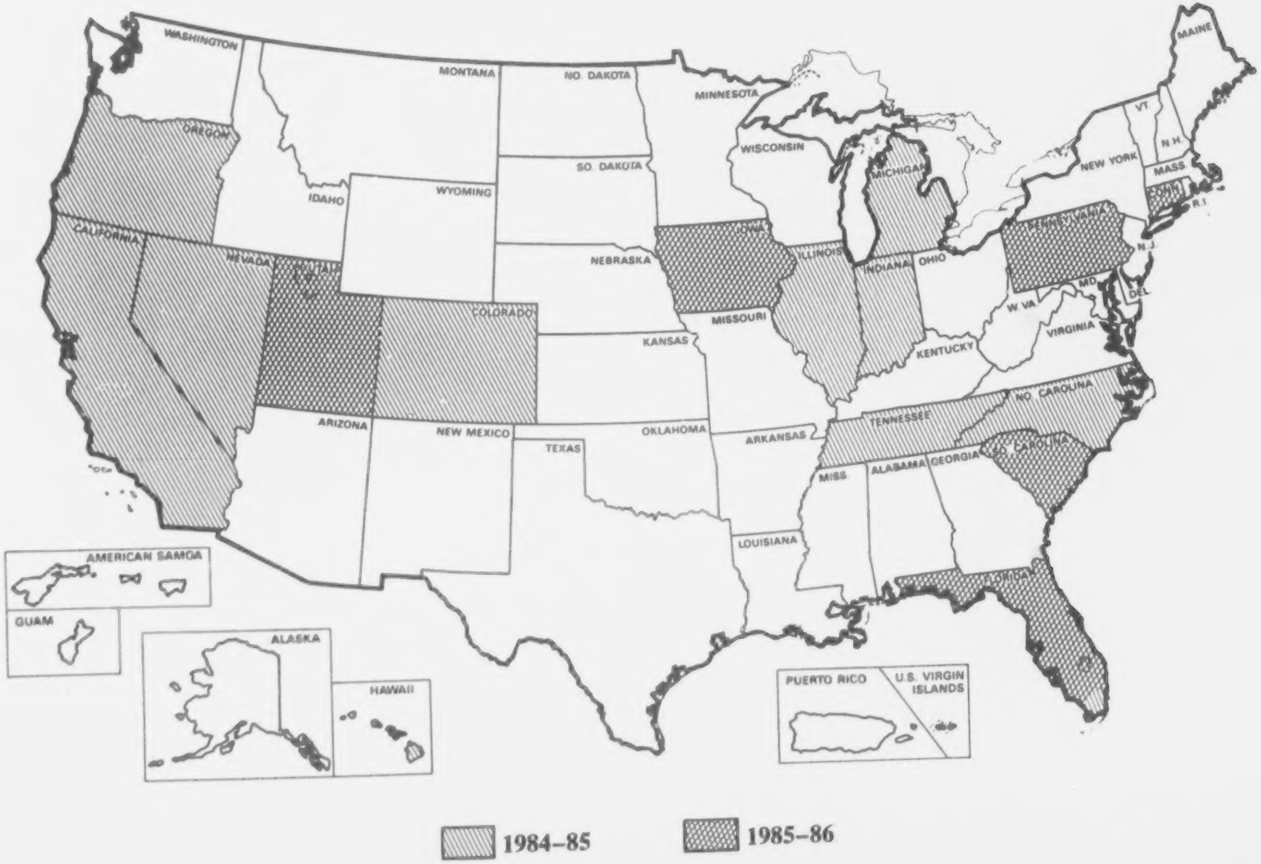
(1984 - 1985 Academic Year)

"Promise and Performance"

IV. Impact on Students



Target States Participating in the OJJDP LRE Program


WASHINGTON
OREGON
CALIFORNIA
NEVADA
IDAHO
MONTANA
WYOMING
UTAH
COLORADO
ARIZONA
NEW MEXICO
NO. DAKOTA
SO. DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
ILLINOIS
MICHIGAN
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISS.
ALABAMA
GEORGIA
FLORIDA
SO. CAROLINA
NO. CAROLINA
VIRGINIA
W. VA.
MD.
DEL.
N.J.
PENNSYLVANIA
NEW YORK
VT.
N.H.
MAINE
MASS.
CONN.
R.I.
AMERICAN SAMOA
GUAM
ALASKA
HAWAII
PUERTO RICO
U.S. VIRGIN ISLANDS
▨ 1984–85
▩ 1985–86

STATEMENT OF FATHER HAROLD BRADLEY, S.J., GEORGETOWN UNIVERSITY

Senator HOLLINGS. Father Bradley?

Father BRADLEY. Senator, I thank you and the subcommittee for the opportunity to testify. I want to testify very briefly about two programs: First is the international student exchange program which was established in 1979 which you have supported very forcefully ever since that time.

As you know, this is a fully reciprocal university level exchange program based at Georgetown University and funded primarily by a grant from USIA under the authority of Fulbright-Hayes Act of 1961. The estimated per participant administrative cost to the Government of this program was an average of $819 in fiscal year 1985; $690 in fiscal year 1986; $600 in fiscal year 1987, and we plan on it being $540 in fiscal year 1988.

All program costs are borne by the individual participants, their home and host universities, and others governments. We would ask that the committee in its report encourage the USIA to continue to fund this program. We anticipate that $382,000 will be needed during fiscal year 1988 to fund a minimum of 700 exchanges.

The second program I would like to talk to you about is the Vietnamese entrepreneurship training program which we established in 1986. It is a course in small business management for Vietnamese refugees and immigrants directed by a Vietnamese educator with academic credentials recognized in this country with extensive experience in training and administration.

The program builds on the refugee's original knowledge, training and work experience to convert his vocational human capital in assets in the American context. We believe this program could effectively be replicated at SBDC's around the United States.

I would ask that the committee in its report encourage the Small Business Administration to fund the extension of this program to other areas in the United States which have received large numbers of Vietnamese refugees.

Just by way of mentioning things we all know about, I would like to comment that in South Carolina, the college of Charleston uses ICEP for all of its exchanges. Clemson University participates, Coastal Carolina college, the University of South Carolina, and University of South Carolina at Columbia.

We have never been, ICEP has never been an institution that supports elite universities, no criticism of elite universities, but they have their own way of getting people abroad. I thank you very much.

[The prepared statement of Father Harold Bradley, S.J. follows:]

STATEMENT OF

REV. HAROLD BRADLEY, S.J.

SPECIAL ASSISTANT TO THE PRESIDENT OF GEORGETOWN UNIVERSITY

Mr. Chairman, Members of the Subcommittee:

I am Rev. Harold Bradley, S.J., Special Assistant to the President of Georgetown University, and I want to thank you and the members of this Subcommittee for the opportunity to testify.

I would like to address briefly two programs. The first is the International Student Exchange Program, which was established in 1979. It is a fully reciprocal, university-level exchange plan, based at Georgetown University in Washington, D.C., and is funded primarily by a grant from the United States Information Agency, under authority of the Fulbright-Hays Act of 1961. Estimated per participant administrative costs to the Government are an average of $819 in Fiscal Year 1985, $690 in Fiscal Year 1986, $600 in Fiscal Year 1987 and $540 in Fiscal Year 1988. All program costs are borne by the individual participants, their home and host universities, and other governments.

I would ask that the Committee in its report encourage the United States Information Agency to continue to fund this program. We anticipate that $382,000 will be needed during Fiscal Year 1988 to fund a minimum of 700 exchanges.

The second is the Vietnamese Entrepreneurship Training Program which was established in 1986. This is a course in small business management for Vietnamese refugees and immigrants. It is directed by a Vietnamese educator with academic credentials recognized in this country and with extensive experience in training and administration. The program builds on the refugee's original knowledge, training, and work experience to convert this vocational human capital into marketable assets in the American context. We believe that this program could be effectively replicated at SBDC's around the United States.

I would ask that the Committee in its report encourage the Small Business Administration to fund the extension of this program to other areas in the United States which have received large numbers of refugees.

I would like to submit for the record additional information about these two programs.

I thank you in the name of the President of Georgetown University, Rev. Timothy S. Healy, S.J.

The International Student Exchange Program (ISEP)

The International Student Exchange Program (ISEP) is a network of 93 American and 90 foreign institutions of higher education in 33 countries. ISEP has facilitated the exchange of 2,500 students since 1979, half from the United States and half from abroad. For the 1987-88 academic year, over 700 exchanges are in process.

This unique program with documented cost-sharing elements promotes fully-reciprocal university level graduate and undergraduate exchanges. The program is funded primarily by the participants themselves who pay their own institution's customary fees for tuition, room and board. Participants pay fees ranging from $5,000 to $18,000 plus their own transportation and personal expenses. The participating institutions provide staff, office space and supplies, and other internal resources for all on-campus administrative costs. Foreign governments are increasingly cognizant of the program's benefit to them and have provided financial support in their own countries.

Two-thirds of the U.S. ISEP members are public institutions in 32 states. ISEP serves its members as a primary resource for sending students abroad, often to developing countries where other programs do not exist. Many of these institutions are facing fiscal difficulties at the moment due to the oil crisis and are being forced to close international offices. If increasing international awareness of future leaders is an important concern of the U.S. government, as we strongly believe it is, then ISEP will be the only mechanism left to some of these institutions with which to carry out this goal.

ISEP participants are among the top students and scholars at their home colleges and universities. ISEP participants from abroad are often selected to receive Fulbright travel grants to supplement ISEP benefits. U.S. ISEP students are of equally high caliber, exhibiting an average GPA above a 3.00. They are carefully screened and nominated for participation in ISEP and are consistently representative of outstanding student leaders on their home campuses.

However, it will be more than the top caliber students who have an effect on the future policies and strength of the United States. The United States pays a political and economic price for not being able to understand other countries and cultures; therefore, the U.S. government has a critical need to prepare its future businessmen and political leaders to deal with world trade problems and to work in a global economic environment. ISEP is assisting the U.S. government in meeting this need. Thirteen percent of the U.S. ISEP participants have studied business or economics in a foreign country; 26% of non-U.S. participants have studied these fields in the United States.

ISEP has been extremely successful in encouraging student exchanges at non-traditional sites and now sends 30% of its U.S. participants to such areas. This figure is six times the national average. ISEP takes students into countries in Latin America, Asia and Africa and to other sites outside the traditional study abroad arena. Most institutions in developing countries use ISEP as part of their staff development programs by sending younger faculty and staff to the United States for graduate level training and research. These graduates resume teaching and administrative positions upon their return to their home countries.

Partial funding for the administration of the program has been provided by the United States Information Agency under authority of the Fulbright-Hays Act of 1961. For the period July 1986 - June 1987, the USIA contribution was $382,651, a 20% reduction from the previous year. USIA has now advised that their contribution will be reduced from this amount to $285,000 and will be phased out over the next three years. However, a renewal grant of $382,000 is necessary for the continuation of this program, a contribution which represents 59% of the overall administrative costs. USIA funding at the current level averages $540 per student compared to funding for traditional Fulbright scholars at a cost to the U.S.

government of approximately $20,000. In other words, ISEP can exchange 700 scholars for the same amount needed to support nineteen Fulbright exchanges. ISEP is a broad-based program that contributes to the educational and cultural exchange goals of the United States.

VIETNAMESE ENTREPRENEURSHIP TRAINING PROGRAM

Over two years ago, with a modest grant from the Small Business Development Center at Howard University which serves business men and women in this area, Georgetown University's Center for Immigration Policy and Refugee Assistance pioneered a course in small business management for Vietnamese refugees and immigrants. Directed by a Vietnamese educator with academic credentials recognized in this country and extensive experience in training, and administration, the bilingual/ bicultural program builds on the refugee's original knowledge, training, and work experience and converts this vocational/ human capital into marketable assets in the American context.

The program consists of a total of 120 hours of instruction offered over 15 weeks. Bilingual instructors who are faculty members of local universities make up the teaching staff. Graduate students in the School of Business Administration help the students develop individual or group business plans, many of which are now in successful operation. Weekly seminars are held at which local business executives, lawyers, franchisors and other experts are guest lecturers. Six classes totaling 125 trainees have completed the course.

Appreciating the innovativness and success of the first program, the U.S. Small Business Administration indicated their interest in extending the program to other areas of the country with large groups of Vietnamese, and Georgetown University submitted a proposal. However, SBA decided against mounting a uniform program at that time, leaving individual areas to institute whatever programs they were able to plan. Georgetown's original proposal would have helped establish a nationally recognized and well defined program at ten SBDC's. Georgetown remains interested in assisting SBA to develop and operate this program in small business management which has proved so highly successfull in this area.

Senator HOLLINGS. Georgetown is not elite? [Laughter.]

Father BRADLEY. Georgetown is certainly elite, but Georgetown is not the major participant in this program. The major participants are Bald State in Indiana; Tennessee, at Knoxville; Kansas; University of Kansas.

Senator HOLLINGS. And Father Healy, yes, I am going the tell him you are down here saying that. [Laughter.]

Try to get someone in Georgetown, you will find how elite it is. That is difficult. Man, I use all kinds of political strings to get a student in there.

Father BRADLEY. Try Father Collins.

Senator HOLLINGS. You want me to try Father Collins?

Father BRADLEY. Father Collins can always handle that.

Father COLLINS. For you, Senator, we can.

Senator HOLLINGS. There is a response, too. One of them has graduated in the top in medicine. He is over at Children's Hospital, a top resident there. Now he is leading in traumatic injury to infants and so forth in the country. I have another one coming into law, but he has already been accepted; he got the grades. That is a good program.

STATEMENT OF FATHER T. BYRON COLLINS, S.J., GEORGETOWN UNIVERSITY

Father Collins, you had some testimony?

Father COLLINS. Yes; very briefly. It is the National Program for Law-Related Education. The committee has supported this, again, for years. Georgetown is a participant with many colleges and universities throughout the Nation. We are presently in 25 States. The amount of money the committee recommended last year, which we are in the process of receiving, Georgetown is an instrument, once again, in this, is $2.2 million. We reached 650,000 students in 25 States.

Senator HOLLINGS. That is wonderful.

Father COLLINS. We are proposing to ask the committee to go to $2.4 so we can go to 34 States and reach 1 million students. The core of this program is that it embraces the State agencies, the State education system, so they can start bearing the cost. Presently, our multiplier is for every $1 you put up, we put $3 alongside of it. So it is a great program, and we ask continuation.

Senator HOLLINGS. Very good. I don't see any trouble with it, really. You have got strong support on this committee for both of them. We can get to the World Health Organization payments. We held up on international labor at one time. I never realized we held up on our payments to World Health.

Dr. HENDERSON. I have a feeling that the World Health Organization and the Pan American Health Organization will get lost in this in the overall consideration.

Senator HOLLINGS. It might have. I didn't realize it. That is an embarrassment, to tell you the truth. Thank you gentlemen very much.

ASIA FOUNDATION

Over the years this subcommittee has had a high regard for the work of the Asia Foundation. Good friends, such as former Senator John Sherman Cooper and Ambassador Mike Mansfield, have reinforced my personal confidence in the work of the Asia Foundation. Recently I met with Ambassador Haydn Williams, the president of the foundation and he outlined their great work in the Philippines and their plans for the South Pacific. I asked Ambassador Williams to prepare a statement for us so that we will have their request in the record. We now have that statement and it will be printed in the record at this point.

[The statement follows:]

The Asia Foundation
Statement for the Record for FY 1988 Funding: The Senate Appropriations Subcommittee for Commerce, Justice and State, the Judiciary and Related Agencies

Haydn Williams
President, The Asia Foundation

Mr. Chairman and Members of the Subcommittee:

I am pleased to submit this report on The Asia Foundation's activities, future directions, priorities and financial needs in support of the Foundation's request for FY 1988 funding.

At the outset I wish to thank the Congress for the interest and support the Foundation has received for its current year program. The general grant provided for by The Asia Foundation Act of 1983 (PL-98-164) has enabled the Foundation to carry forward throughout Asia, its quiet, low-key efforts to help those Asian individuals and institutions concerned with furthering:

- Democratic values and practices;
- Constitutional government;
- Free and fair elections;
- Democratic law-making;
- Equitable systems of justice;
- Respect for human rights;
- The free flow of information;
- Open market economies;
- Democratic pluralism; and
- Private volunteerism.

The challenges and the opportunities open to the Foundation in much of Asia, which is in a pivotal stage, are significant and growing in magnitude. To help the Foundation meet these needs the Senate Foreign Relations Committee has authorized $15 million for the Foundation for FY1988. It is the Foundation's hope that this

Subcommittee will recommend approval of an appropriation of a similar amount for FY1988 in recognition of the growing importance of Asia to the United States and the Foundation's unique capabilities to serve simultaneously Asian needs and American interests.

For the past 36 years The Asia Foundation has been the leading American private organization devoted to helping Asians strengthen their own basic political, legal, educational and social institutions in keeping with their own wishes and aspirations. Support for movement toward more open, just and democratic societies consistent with Asian values and traditions has been at the center of the Foundation's work since its inception. Indeed, a significant number of contemporary Asian leaders and institutions in the forefront of peaceful democratic change in Asia today are former and continuing Asia Foundation grantees.

Ambassador Monjo in testifying before the House in April reaffirmed the Department of State's view that the Foundation was making important and distinctive contributions to long-term U.S. foreign policy objectives in Asia and the Pacific, "with particular reference to the Foundation's pioneering and continuing role in encouraging the growth of democracy in Asia."

He continued:

> "Some of the growing momentum in this direction in Asia is due in part, and I would say in large part, to the Foundation's sensitive and patient programming over the years. Today The Asia Foundation constitutes and continues to be the principal private American organization furthering the ideals and practices of democracy in Asia."

Nowhere is this better illustrated than in the Philippines. In 1984, 1985 and 1986, because of its long established presence and wide acceptance, the Foundation was in a position to respond quickly to requests for assistance from citizen organizations determined that democracy was to be saved, that free and fair elections were to be held, that the popular will of the people was to prevail. The Foundation's response to those concerned with making the processes of democracy work before and after the February 1986 presidential election is a matter of record.

The story continues. Thanks to the action of the Congress in passing a special $2 million supplemental for the Foundation in 1986 for its ongoing democracy development program in the Philippines, the Foundation's efforts continue. Philippine initiatives to draft and ratify a new constitution have been assisted. Citizen education in the values and fundamentals of democratic self-government have been funded. The study of court reorganization, the training of judges and steps to restore public confidence in the system of justice have been given priority attention and support.

Requests for assistance in planning for the new national Congress, its administrative infrastrucure and staffing have been met with the cooperation of the U.S. Congress. Additionally, requests for helping to restore "good government," to raise the levels of professional standards in the civil service have also been approved. The Press Institute of the Philippines, closed for years, has been reopened with Foundation assistance and finally, in response to requests, supplemental funds have been used by Philippine private institutions in their efforts to bring about national reconciliation and improved civil-military relations.

In other parts of Asia, the Foundation is equally active but with fewer resources to meet the needs of rapidly changing societies and an increasing number of requests for Foundation assistance. The character and size of Foundation response has varied from country to country depending on need, local circumstances and available funds. Currently the Foundation has offices and programs in 10 countries from Korea to Pakistan. It also makes grants in an additional 14 countries including the People's Republic of China (the Foundation's long-standing program in Taiwan also continues).

While differing in size and priorities, Asia Foundation programs in Asian countries share many common interests and objectives. Currently the Foundation is:

- helping to strengthen the administrative underpinnings, the procedures, the staffing, the libraries and the research and legislative drafting capabilities of nearly every national parliament, assembly or legislature in Asia.
- supporting the least advantaged of the three branches of government -- the judiciary -- with court modernization, judicial education, the training of public prosecutors and public defenders and the search for alternative means of dispute resolution.
- aiding in the improvement of government services and the administration of public policies, largely through research, professional education abroad and in-service training programs for public servants.
- responding to opportunities to help foreign ministries with the establishment of foreign service institutes and for the education of young Asian diplomats in the United States.
- strengthening higher education through curriculum and faculty development, support for research, library development and professional exchange projects.
- encouraging higher standards for media, the open flow of information and public discussions of important national and international issues; and
- providing start-up assistance and institutional and program support for private organizations concerned with community and national affairs -- an essential ingredient in nascent and developing democracies.

As the most active American private foundation concerned with all major aspects of Asian-American relations, the Foundation in FY1987 continues to be a strong proponent of greater Asian regional cooperation and exchange. With help from the Luce Foundation, The Asia Foundation today is the major facilitator for private sector cooperation and exchange across national boundaries in the ASEAN Region.

LAWASIA, the principal regional organization in Asia for judges, lawyers, law professors and other practitioners continues to receive encouragement, cooperation and support from The Asia Foundation. Numerous other Asian regional organizations have come into being with Foundation assistance, and seminars and conferences on timely subjects received support from the Foundation on a highly selective basis.

On the broader front of U.S.-Asian relations and evolving U.S. concerns and interests, the Foundation's new Center for Asian Pacific Affairs is serving as a catalyst in bringing together high-level Asians and Americans from government, business, academia and media in a private setting to exchange views on bilateral problems and regional issues of international significance. During the current year The Asia Foundation Center has, in cooperation with Asian and American institutions, held bilateral forums between the United States and Pakistan, the U.S. and Indonesia and the U.S. and Thailand. The Foundation also underwrote part of the costs of the second ASEAN-U.S. Business Roundtable which was held in San Francisco. The second round of the U.S.-Korean Bilateral Forum will be held in August of this year.

The Asia Foundation has been the primary funder of the U.S. National Committee for Pacific Economic Cooperation. It has sponsored the first Pacific Trade Policy Forum and a Direct Foreign Investment Conference in Bangkok. The Foundation's Center for Asian Pacific Affairs is the western and main operating office of the U.S. National Committee and it hosted the 1987 meeting of the Pacific Economic Cooperation Conference' Standing Committee representing 14 national committees from Pacific Rim Countries.

Many of the Center's activities, including research and its information service function, are centered on the rapidly growing importance of U.S.-Asian economic relationship and the threat posed by unequal foreign trade policies and other impediments to the open market system which places the U.S. at a disadvantage. The Foundation believes that the growing interdependence of the economies of the Pacific Rim countries will dominate U.S.-Asian bilateral and multilateral relationships in the immediate years ahead. How this interdependence is managed will be of enormous importance to the peoples of Asia and the United States.

In closing this review of the Foundation's current activities supported by its general grant from the Congress, special attention is given to the Foundation's most widely known program: "Books for Asia." This year the Foundation is celebrating the sending of its 25 millionth book to Asia.

This unusual program, cited by the Library of Congress' Center for the Book as America's most successful private American overseas book distribution program, will send this year approximately 1,400,000 books and journals to twenty-two Asian countries. There is hardly a library in Asia that has not been a recipient of an Asia Foundation book since the inception of this program in 1954.

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FY1988 will find much of Asia undergoing continuing rapid change. The next two or three years will be critical ones affecting the internal stability and future political direction of several Asian countries. Important long-term American interests are at stake. To best serve these interests, the authorized level of $15 million for The Asia Foundation for FY1988 is needed for the following main reasons:

1. To permit the Foundation to continue to respond to Asian initiatives and requests for assistance in the movement toward democracy, toward more open, just and democratic societies. This

Asia-wide effort will continue to be the heart of the Foundation's work.

2. To allow the Foundation to concentrate its special attention and capabilities on three countries and one regional area of major concern to the United States:

- Korea: to build on the Foundation's current associations and programs to further non-violent change, local self-government, an orderly transfer of authority and movement to constitutional democracy.
- Philippines: to carry forward the second year of the Foundation's special effort to assist in the further strengthening of constitutional government, national reconciliation and grass root democracy.
- Pakistan: to respond as the only private American grant-making Foundation in the country, to calls for educational help, foreign service training and for assistance in building the administrative base for the new national parliament.
- The South Pacific: to establish an office and a program in this strategic area where there is minimal U.S. presence and where threats to American interests are growing.

3. To enable the Foundation to intensify its activities aimed at furthering Pacific Economic cooperation and American economic interests through efforts to change Asian attitudes and policies toward foreign trade and investment and the protection of intellectual property rights. Additional funds will also allow the Foundation to increase the U.S. National Committee for Pacific Economic Cooperation's involvement in the task forces (minerals, energy, fishing), the trade forums and the plenary sessions of the Pacific Economic Cooperation Conference.

4. To allow the Foundation to lend assistance to an emerging new generation of Asian leaders; to help with their education, research, travel abroad and with their internal institutional building ideas and intitiatives. Of special importance are the rising young military officers of Asia who tend to be isolated and overlooked by those outside of professional military circles.

5. To give the Foundation the resources needed to expand its Books for Asia Program. Asian libraries, universities and students

are hungry for American books. With a small increase to cover handling and shipping, the Foundation can send a million and a half books to twenty-two countries in Asia in 1988. It would like to do so to meet Asian pressing needs and to also meet the challenge of a stepped-up Soviet book offensive in Asia.

6. To permit the Foundation to catch up with inflation. In 1983 the Congress and the Department of State set $10 million as the base level of annual support for the Foundation. The Foundation has not had any increase for inflation above this base level in any of the last five years. This means that each year the Foundation has had less money for programs and the weakening of the dollar has meant a further erosion of the Foundation's financial situation in some major countries in Asia.

The Foundation's Trustees realize that the Foundation is an example of a working public-private partnership. To supplement the general support funds received from the United States Government, the Foundation actively seeks private American support. Last year, the total private input--income from endowment, cash gifts and in-kind contributions--more than matched the funds received from the public sector. It is expected that private supplemental giving in FY88 will continue to grow.

The Foundation is also acutely aware that it is a steward of public funds entrusted to it, and its obligation for strict accountability. Over the years it has demonstrated a cost-consciousness which has produced an extremely favorable cost-benefit ratio. The Foundation's salary scales are below those of U.S. and multilateral agencies. Its staff overseas live and work in modest circumstances and live off the local economies.

Efforts are made to apply new funds first to programs, with additional administrative expenses being kept to a minimum. It has been said many times by U.S. officials and independent observers that, in terms of quality of programming and cost-effectiveness, the Government receives a great deal of mileage out of the money it provides The Asia Foundation.

In this regard, the State Department in its testimony before the House on the FY1988 appropriation for The Asia Foundation, said:

> "Relatively speaking, The Asia Foundation budget, which is insignificant when compared with others, has a tremendous amount of impact for the number of dollars expended."

Mr. Chairman, the dramatic changes to which I have referred in each of my last statements before the Congress are continuing and gaining momentum in Asia. These changes emanating from Asian yearnings for democratic change, for more open societies where freedom can flourish, deserve our support and our approbation. Such support will place Asian-American relations on an even firmer footing in the future because the changes will be rooted in the popular consent of Asian peoples.

The $15.0 million authorized for The Asia Foundation for FY1988 by the Senate Foreign Relations Committee, if appropriated, will provide the Foundation with its basic financial footing. These General Grant funds will be the principal means for supporting the Foundation's infrastructure and for the major part of its substantive program in Asia. It will also serve as the nucleus around which other support is generated.

With a $15.0 million appropriation, the Foundation will be able to carry forward the second year of its special democracy program in the Philippines, answer the challenge to U.S. interests in the South Pacific, pick up the pace of its programming in Korea and Pakistan at a critical time, and capitalize on its wide-open opportunities to help strengthen the legislatures, the courts and respect for human rights throughout Asia. Without these additional funds, these opportunities will be lost.

In closing, I would like to thank the Congress--its Members, Staff, the Office of the Clerk, the Budget Office, the House Information Systems Office, the Senate Computer Center, the Congressional Research Service, the Committees and Joint Committees, and innumerable others--for the generous cooperation the Foundation has received in arranging visits and special programs for Asians who are anxious to strengthen the process of democratic law-making in their own countries. The United States Congress is indeed "a practical school of democracy," which is having an impact on democratic development in Asia.

Thank you, Mr. Chairman.

June 8, 1987

IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT OF RICHARD H. JUDY, DIRECTOR OF AVIATION, MIAMI INTERNATIONAL AIRPORT ON BEHALF OF AIRPORT OPERATORS COUNCIL INTERNATIONAL

Senator HOLLINGS. The sixth panel will be devoted to Immigration and Naturalization. We have Mr. Richard Judy; Mr. James Hickey and Mr. Rupert Cutler.

Are you the director of the Miami Airport?

Mr. JUDY. Yes, sir.

Senator HOLLINGS. How many legal and how many illegal planes land there a day?

Mr. JUDY. I think mostly legal. The question is whether there is any illegal material on them; that is the question.

Senator HOLLINGS. That is tough, isn't it?

Mr. JUDY. Yes; it is very difficult.

Senator HOLLINGS. That is difficult.

Mr. JUDY. I think we are doing as much as we can do. As an airport, we are trying to do more than we could be doing in getting the airplanes flying all over the world. We are looking at some high-technology uses, actually, to try to get right at the aircraft. We are getting a handle on it, but we need help.

Senator HOLLINGS. We appreciate your leadership.

Mr. JUDY. What we are here for today, who I represent, Senator, Mr. Chairman, is AOCI, the Airport Operators Council, and we are here to speak about the Federal Inspection Services at our airports.

During the last year, I think you made great progress in putting the head taxes in place. We had $5 head taxes coming in on all passengers coming in from Immigration Service. We set that up in separate, distinct funds.

In the Customs area, of course, we have a $5 charge there, but for some reason, that got mixed up in the legal process and it really is going into the general fund. In any event, we have that; it is in place. It is going a long way to solve our problem.

Immigration now has implemented the new inspection positions. What is occurring this year is airports are having a 25-percent increase in their foreign travel. It is probably one of the largest travel years in the history of the United States in an international perspective.

Senator HOLLINGS. Going out and coming in are about equal, or is there a tremendous incidence now of foreign tourists, or are we all leaving and coming back in?

Mr. JUDY. I think we have it the other way. Because of the dollar, you are going to see a huge increase in foreign travel. This means a lot in terms of balance of payments, as you know. It means tourists coming in; what appears to be an import really is an export. That is coming along.

The problem we have is the Immigration Amnesty Program has passed, as you know. This is just breaking news that is starting to occur now. Immigration now is seeking the new positions. We see a rash of inspectors at our airports going to personnel departments trying to transfer out of airports into this program.

Los Angeles right now just came close the other day to having to literally close the terminal because of the loss of inspectors. They have a real transition problem that really needs some congressional action. This just can't be permitted to occur. We have got to be sure that we have inspectors in place before we permit the transfer. I am not trying to stop Federal people or employees to better themselves, but this has to be put in rationally, or we are going to have black Mondays and black Saturdays and Sundays, with 4- and 5- and 6-hour waits to get through Customs. It will really be a national disaster.

In turn, Senator, when you have that type of situation, it ricochets into the whole transportation system: airplanes are delayed; our domestic system is delayed. It causes humiliation. It is bad enough with weather conditions and other problems, but when you induce this type of delay, it is going to be very, very serious this summer.

I believe that by next year, we are going to work our way out of this. If I carry one message, that is a very, very important one.

The other message is that I think it important for us to consider, now that we have some control funding, and I discussed this with Ways and Means yesterday, with Mr. Gibbons. They are giving a lot of thought to it. ATA has jumped on the bandwagon, and that is this: That we, as a people, are putting in standards for immigration for this clearing process. We have made study after study to know that 45 minutes is a reasonable standard to put in airports for all of passengers to clear the Federal inspection process.

It is not a funding problem any more. Now it is shifting to a management problem. Whether you require that by rulemaking, which may make some sense, that these agencies get together and develop a rulemaking to set up some standards for American citizens and foreign visitors to clear the inspection process at these international airports.

International transportation, as you well know, is really just beginning. It is bringing the world together. Our commerce depends on it, the swift movement of people and cargo. It has become a whole new infrastructure for the competitive ability of our Nation.

Air transportation is not just a recreational tool any more; it is vital to the economic health of our Nation. We have a responsibility for industry, for people, business people. We have to be able to rely on a reasonable process and the services of our Government. In funding it, sir, we should have a rulemaking of some sort, even in this Congress, to state that a standard is going to be 45 minutes and we are going to achieve that goal.

What is wrong with us establishing goals for us to achieve? But if you leave it to the agency itself, it just doesn't occur, sir. I have been working with them for 10 years, pushing this, and you need that type of push. I think that if you will do this rulemaking to establish the standard, it will be one of the most significant contributions since you established the head tax.

Senator HOLLINGS. We will see what we can do.

Mr. Judy. Thank you.

Senator HOLLINGS. I appreciate your speaking on it.

[The prepared statement of Richard H. Judy follows:]

AIRPORT OPERATORS COUNCIL INTERNATIONAL

TESTIMONY OF THE

AIRPORT OPERATORS COUNCIL INTERNATIONAL

ON

THE IMMIGRATION AND NATURALIZATION SERVICE

MR. Richard Judy, Director of Aviation, Miami International Airport

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM RICHARD H. JUDY, AVIATION DIRECTOR FOR MIAMI INTERNATIONAL AIRPORT AND I AM PLEASED TO TESTIFY TODAY ON BEHALF OF AOCI'S U.S. MEMBERS, PARTICULARLY THE MAJOR INTERNATIONAL AIRPORTS THAT THIS YEAR WILL RECEIVE 25 MILLION ARRIVING INTERNATIONAL PASSENGERS. I APPRECIATE THIS OPPORTUNITY TO EXPRESS OUR VIEWS AND CONCERNS REGARDING THE FUNDING AND MANAGEMENT OF THE U.S. IMMIGRATION AND NATURALIZATION SERVICE.

THE AIRPORT OPERATORS COUNCIL INTERNATIONAL (AOCI) IS THE ASSOCIATION OF GOVERNMENTAL BODIES THAT OWN AND OPERATE THE PRINCIPAL AIRPORTS SERVED BY SCHEDULED AIRLINES HERE AND AROUND THE WORLD. OUR MEMBERS ANNUALLY ENPLANE MORE THAN 90% OF THE TOTAL DOMESTIC AND VIRTUALLY ALL U.S. INTERNATIONAL SCHEDULED AIRLINE PASSENGER AND CARGO TRAFFIC. WORLDWIDE, AOCI'S INTERNATIONAL MEMBER AIRPORTS ENPLANE TWO-THIRDS OF ALL AIRLINE PASSENGERS ON SIX CONTINENTS.

IN TODAY'S ECONOMIC ATMOSPHERE OF BURGEONING TRADE DEFICITS AND INTENSE INTERNATIONAL COMPETITION, AOCI BELIEVES WE SHOULD BE DOING

OUR BEST TO BRING TOURISM AND OTHER INVESTMENT OPPORTUNITIES TO OUR SHORES. SIMPLY PUT, FOREIGN TRAVEL MEANS ECONOMIC EXPANSION AND MORE TRADE OPPORTUNITIES FOR AMERICAN BUSINESSES. CONVERSELY, A POOR IMMIGRATION INSPECTION SERVICE MEANS THE OPPOSITE.

IN OUR TESTIMONY TODAY, WE REQUEST YOUR ACTION ON TWO PRIMARY CONCERNS:

1. AOCI SUPPORTS INCREASING IMMIGRATION INSPECTORS AT INTERNATIONAL AIRPORTS AND STREAMLINING INSPECTION PROCEDURES TO REDUCE DELAYS AND URGES THIS SUBCOMMITTEE TO INCREASE INS FUNDING TO ADDRESS AND PREVENT FURTHER INS DELAYS AT INTERNATIONAL AIRPORTS.
2. WE ALSO STRONGLY SUPPORT PROHIBITING THE USE OF IMMIGRATION USER FEES FOR ANY PURPOSES OTHER THAN SERVICES DIRECTLY RELATED TO PROCESSING PASSENGERS AT COMMERCIAL AIRPORTS AND SEAPORTS AS PROVIDED IN P.L. 99-500 AND REIMBURSING INTERNATIONAL AIRPORTS FOR PROVIDING INSPECTION FACILITIES.

IMMIGRATION AND NATURALIZATION INSPECTIONS AND U. S. TOURISM COMMERCE

IT IS SAFE TO SAY THAT PASSENGERS ON ARRIVING INTERNATIONAL FLIGHTS HAVE FREQUENTLY EXPERIENCED LONG LINES AND EVEN LONGER WAITS TO BE CLEARED BY FEDERAL INSPECTION SERVICES (F.I.S.). RETURNING U.S. CITIZENS AND RESIDENTS MUST OFTEN VIEW THE F.I.S. PROCESS AS A NECESSARY BUT BURDENSOME EVENT, SEEMINGLY DESIGNED TO TEST THEIR PATIENCE AFTER A LONG AND WEARYING INTERNATIONAL FLIGHT.

TO MANY FOREIGN TRAVELERS, THEIR FIRST IMPRESSION OF THE UNITED STATES IS EXTENSIVE TIME SPENT IN LINE AT THEIR AIRPORT OF ENTRY DURING PROCESSING BY F.I.S. THESE DELAYS OFTEN LEAVE A NEGATIVE AND LASTING IMPRESSION ON U.S. EFFICIENCY AND AIRPORT QUALITY. I NEED NOT STRESS TO THIS SUBCOMMITTEE THE IMPORTANCE OF LINKING GOOD SERVICE LEVELS TO THE GENERATION OF TOURISM DOLLARS AND THEIR IMPACT ON JOBS AND THE NATION'S TRADE BALANCE. PURELY ON A COST-BENEFIT BASIS, IT IS, THEREFORE, INCUMBENT ON US ALL TO MAKE EVERY EFFORT TO IMPROVE SERVICE LEVELS FOR THESE VISITORS.

AIRPORT AUTHORITIES MUST PROVIDE, AT THEIR OWN COST, FACILITIES FOR FEDERAL INSPECTION SERVICE SCREENING OF ARRIVING PASSENGERS. HOWEVER, AIRPORTS CAN NEITHER DIRECTLY INFLUENCE PROCEDURES USED BY THOSE FEDERAL AGENCIES NOR ASSURE THAT ADEQUATE INSPECTION MANPOWER WILL BE AVAILABLE. BOTH IMMIGRATION STAFFING AND PROCEDURES ARE GOVERNED BY DECISIONS HERE IN WASHINGTON, LARGELY GUIDED BY ARCHAIC REGULATIONS AND CONSTANT BUDGETARY CONSTRAINTS, WHICH BEAR LITTLE RELATIONSHIP TO NEEDS OR REQUIREMENTS, LOCALLY OR NATIONALLY.

THE RESULTING DELAYS CAUSE PASSENGER FRUSTRATION AND INEFFICIENT AIRCRAFT USE. MORE THAN JUST IRRITATING, THESE DELAYS ARE EXTREMELY COSTLY FOR AIRPORTS, AIRLINES AND OUR ECONOMY. MISSED FLIGHT CONNECTIONS CAUSED BY LATE INTERNATIONAL PASSENGER PROCESSING CREATE HUGE COSTS IN WASTED TIME FOR AIRLINES AND AIR TRAVELERS WHO OFTEN ENGAGE IN TIME-SENSITIVE BUSINESS PROJECTS. IN SHORT, THESE DELAYS DRASTICALLY REDUCE ECONOMIC PRODUCTIVITY.

AIRPORT OPERATORS AND THE COMMUNITIES THEY SERVE HAVE A STRONG INTEREST IN ATTRACTING FOREIGN VISITORS FOR THE ECONOMIC BENEFITS THEY BRING TO LOCAL BUSINESS AND THE COUNTRY. THESE AIRPORTS THEREFORE ALSO HAVE A STRONG INTEREST IN ASSURING THAT THE ARRIVAL OF THEIR VISITORS IS AS EFFICIENT AND PLEASANT AS POSSIBLE.

AOCI HAS LONG ADVOCATED THAT FEDERAL INSPECTION SERVICES (IMMIGRATION, CUSTOMS, AGRICULTURE, AND PUBLIC HEALTH) SHOULD, IN CLOSE COOPERATION WITH U.S. INTERNATIONAL AIRPORT OPERATORS AND AIRLINES, ADOPT ALL PRACTICABLE MEASURES TO FACILITATE INTERNATIONAL AIR TRAVEL AND PREVENT UNNECESSARY DELAYS. WHILE FEDERAL REGULATIONS MUST BE ENFORCED, THEY SHOULD BE SENSIBLE REGULATIONS, APPROPRIATE TO 1988, AND BE CARRIED OUT IN A MANNER IMPOSING THE LEAST POSSIBLE INCONVENIENCE ON AIR TRAVELERS.

FOR EXAMPLE, A "CITIZEN'S BYPASS", IN SUCCESSFUL USE AT MIAMI INTERNATIONAL AIRPORT AND IN MANY EUROPEAN COUNTRIES, SHOULD BE UNIVERSALLY APPLIED IN THE UNITED STATES. THIS PROCESS HAS DEMONSTRATED ITS VIABILITY FOR IMPROVING OVERALL PASSENGER PROCESSING AND WOULD ALLEVIATE MANY PROBLEMS ASSOCIATED WITH CURRENT INSPECTION PROCEDURES. MIAMI INTERNATIONAL AIRPORT DISAGREES WITH INS PLANS TO

EXAMINE REINSTITUTING DEDICATED INSPECTION LINES FOR U.S. CITIZENS.

ADEQUATE STAFFING UNDER ANY NEW OR EVEN EXISTING SYSTEM MUST BE ENSURED BY A FEDERAL MANDATE THAT ALL NON-CITIZEN PASSENGERS BE CLEARED NOT ONLY THROUGH INS BUT ALL FEDERAL INSPECTION SERVICES WITHIN FORTY-FIVE MINUTES OF THEIR ARRIVAL. THE STANDARD OF CLEARING ALL PASSENGERS WITHIN FORTY-FIVE MINUTES IS NOT AN ARBITRARY FIGURE. FORTY-FIVE MINUTES REPRESENTS THE MAXIMUM AMOUNT OF TIME THAT PASSENGERS HAVE TO CLEAR FEDERAL INSPECTION IF THE INTERNATIONALLY ACCEPTED 1-1/2 HOUR CONNECTING TIME AT SUCH LARGE INTERNATIONAL AIRPORTS AS MIAMI, KENNEDY INTERNATIONAL AIRPORT IN NEW YORK, LOS ANGELES, AND OTHERS IS TO BE FEASIBLE.

THE COSTS OF HAVING TO DELAY CONNECTING FLIGHTS MULTIPLY WHEN ONE CONSIDERS THE VALUE OF AIRCRAFT EQUIPMENT WHICH LIES IDLE WHILE PASSENGERS ARE BEING PROCESSED. CURRENT INS (AND OTHER F.I.S. STAFFING LEVELS ARE SIMPLY INADEQUATE TO ASSURE TIMELY CLEARANCES.

INSPECTION FACILITIES AND STAFFING FOR RELIEVER AIRPORTS ARE ALSO NEEDED TO EASE OPERATIONAL PRESSURES ON MAJOR INTERNATIONAL AIRPORTS WHICH ALSO HANDLE ARRIVING INTERNATIONAL CORPORATE AND GENERAL AVIATION FLIGHTS. BOTH THESE AVIATION SERVICES ARE IMPORTANT TO OUR INTERNATIONAL COMPETITIVENESS AND DESERVE BETTER SERVICE THAN THEY ARE RECEIVING TODAY.

ONLY WHEN WE HAVE A STREAMLINED AND SUFFICIENTLY STAFFED FEDERAL INSPECTION SERVICE WILL U.S. CITIZENS AND FOREIGNERS ALIKE BE RECEIVING A "SERVICE" FROM FEDERAL INSPECTION. A MORE EFFICIENT F.I.S. WILL HELP ENSURE THAT WE ARE NOT PROTECTING OUR BORDERS AT THE COST OF PROMOTING AMERICA AS A WELCOMING PLACE.

INS BUDGETARY REQUEST

CURRENT TRAFFIC PROJECTIONS INDICATE THAT 29 MILLION INTERNATIONAL ARRIVING PASSENGERS WILL USE OUR NATION'S AIRPORTS ANNUALLY BY FISCAL 1988, A 16 PERCENT INCREASE OVER 1987 PROJECTIONS. AOCI BELEIVES THAT CONGRESS NEEDS TO ENSURE THAT THE FUNDS FOR PASSENGER ARRIVAL INCREASES WILL BE AVAILABLE TO PRECLUDE

STAFF REDUCTIONS DURING THE MIDDLE OF OUR PEAK TRAVEL SEASON. WE AT MIAMI INTERNATIONAL AND ALL AOCI MEMBERS ARE GREATLY CONCERNED THAT THE ADMINISTRATION'S BUDGET FOR FISCAL YEAR 1988 CONTAINS NO PROVISIONS TO SUSTAIN CURRENT OR PROVIDE INCREASED LEVELS OF INS INTERNATIONAL AIRPORT STAFFING FOR FUTURE GROWTH. WE ARE ALARMED THAT NO STAFF ADJUSTMENTS ARE BEING PROPOSED WHEN THE U.S. DOLLAR IS DECLINING AND WE CAN EXPECT A GREAT MANY MORE FOREIGN VISITORS.

INSPECTION PROCESSING DELAYS OF 1-1/2 TO 2 HOURS AT MANY AIRPORTS ARE TOO COMMON. THE RESULTING FLIGHT RE-CONNECTIONS AND DISPLACED PASSENGERS MAKE AIRPORTS EVEN MORE CROWDED AND TRYING THAN DURING NORMAL FULL CAPACITY OPERATIONS. THE PLANNED 1987 STAFF INCREASES, IF REALIZED, WILL AT BEST RETURN THE SYSTEM TO EQUILIBRIUM AND CANNOT MEET INSPECTION NEEDS FROM FUTURE GROWTH. WE MUST ADDRESS THIS PROBLEM BY PROVIDING FUNDING TO ASSURE THAT FUTURE STAFFING LEVELS WILL BE ADEQUATE TO SERVICE EXPECTED INCREASES IN PASSENGER TRAFFIC.

AOCI MEMBERS ALSO BELIEVE THAT AIRPORT OPERATORS SHOULD NOT HAVE TO BEAR THE BRUNT OF COSTS INCURRED TO PROVIDE OFTEN EXTENSIVE, AND EXPENSIVE, FACILITIES REQUIRED FOR CARRYING OUT FEDERAL INSPECTIONS WHEN A VEHICLE EXISTS TO PROVIDE REIMBURSEMENTS. AIRPORTS HAVE INVESTED GREAT SUMS OF MONEY TO PROVIDE ADEQUATE F.I.S. FACILITIES -- FROM THE STERILE CORRIDORS TO BAGGAGE CLAIM AREAS -- IN ACCORDANCE WITH F.I.S. SPECIFICATIONS.

AS AN EXAMPLE, MIAMI INTERNATIONAL AIRPORT HAS ALREADY MADE CAPITAL INVESTMENTS OF MORE THAN $58 MILLION IN PASSENGER INSPECTION FACILITIES, WITH AN ADDITIONAL $42 MILLION IN FACILITIES UNDER DESIGN AND CONSTRUCTION. ADDITIONALLY, THE MIAMI AIRPORT HAS ALSO INVESTED MORE THAN $25 MILLION IN CARGO INSPECTION AND CLEARANCE FACILTIES. OPERATIONAL STAFF SUPPORT AND MAINTENANCE OF THESE FACILITIES COST THE AIRPORT MORE THAN $6 MILLION ANNUALLY.

IMMIGRATION INSPECTION USER FEES

WE ARE ALSO CONCERNED, MR. CHAIRMAN, THAT USER FEES RECENTLY

ENACTED BY CONGRESS (P.L. 99-500, SECTION 205) MUST BE ALLOCATED FIRST AND FOREMOST TO COVER FULLY THE COST OF STAFFING LEVELS CURRENTLY BEING ADDED AS WELL AS THE SUBSTANTIAL INCREASE IN STAFFING REQUIRED IN FY 1988 AND BEYOND TO MEET PROJECTED INCREASES IN INTERNATIONAL PASSENGER ARRIVALS. MOREOVER, WE ARE CONCERNED THAT THESE FEES MAY BE DIVERTED TO OTHER AREAS.

AOCI ACCEPTS THE PRINCIPLE THAT USER FEES ARE AN APPROPRIATE MEANS TO RECOVER FEDERAL GOVERNMENT COSTS FOR SPECIFIC SERVICES. USER CHARGES RAISED FROM SPECIFIC USERS, HOWEVER, SHOULD BEAR DIRECT RELATION TO THE COST OF PROVIDING THAT SERVICE.

THEREFORE, AOCI MAINTAINS THAT ONE USER FEE SHOULD BE COLLECTED -- CERTAINLY NO MORE THAN THE TWO WE ALREADY HAVE (CUSTOMS HAS A $5 PER PASSENGER FEE ALSO). THE COMBINED REVENUES SHOULD BE KEPT TOGETHER IN ONE TRUST FUND SEPARATE FROM THE GENERAL TREASURY SO MONIES CAN SUPPORT PROJECTS OR SERVICES MOST IN NEED, REGARDLESS OF WHETHER THEY AFFECT CUSTOMS, IMMIGRATION, AGRICULTURE OR PUBLIC HEALTH.

OF COURSE, MORE IMMIGRATION INSPECTORS AND FACILITIES REIMBURSEMENT COST MONEY. ACCORDING TO INS, USER FEES FROM IMMIGRATION SHOULD GENERATE SOME $120 MILLION IN FISCAL YEAR 1987. FOR FISCAL YEAR 1988, RECEIPTS ARE EXPECTED TO RAISE SOME $150 MILLION. HOWEVER, INS EXPECTS TO OBLIGATE ONLY $70.4 MILLION IN 1987 AND $74 MILLION IN 1988 FOR ITS TOTAL OPERATIONS, WITH ONLY A SMALL PORTION GOING TO INSPECTION SERVICES. WE STRONGLY OPPOSE INSTITUTING USER FEES FOR IMMIGRATION, CUSTOMS, OR ANY OTHER FEDERAL SERVICE TO GENERATE REVENUES FOR UNRELATED FEDERAL PROGRAMS, OR TO REDUCE THE OVERALL FEDERAL BUDGET DEFICIT.

MR. CHAIRMAN, WE ASK THAT CONGRESS EXERT ITS OVERSIGHT POWER TO ENSURE THE INTEGRITY OF THE USER-FEE SYSTEM IS MAINTAINED. THERE MUST BE FULL AND CLEAR ACCOUNTABILITY FOR THE COLLECTION, ADMINISTRATION AND EXPENDITURE OF USER FEES TO ENSURE THEY ARE DEVOTED TO THE PURPOSE FOR WHICH THEY WERE AUTHORIZED -- NOT MISUSED TO BECOME SIMPLY ANOTHER GOVERNMENT TAXING MECHANISM. EVEN BEFORE THE $5 PER HEAD CUSTOMS AND IMMIGRATION USER FEES AND THE 0.22% CARGO

FEE, INTERNATIONAL AIR TRAVELLERS AND SHIPPERS HAVE BEEN PAYING FOR FEDERAL INSPECTION FACILITIES. EACH INTERNATIONAL PASSENGER PAYS A $3 DEPARTURE TAX WHICH ACCUMULATES IN THE AIRPORT AND AIRWAY TRUST FUND AND, ALONG WITH OTHER AVIATION USER RAXES, HELPS PAY FOR THE IMPROVEMENT OF OUR AIRPORTS AND AIRWAYS.

IF I SEEM TO BELABOR THIS POINT, IT IS BECAUSE IN THE ONLY OTHER EXPERIENCE AIRPORTS AND PASSENGERS HAVE WTIH USER-FEES -- THE AIRPORT AND AIRWAY TRUST FUND -- THOSE FUNDS HAVE BEEN ALLOWED TO GROW, NOT FULLY USED FOR THEIR INTENDED PURPOSES. WE MUST NOT LET THE SHAMEFUL MISAPPROPRIATION OF THE USER FEE SYSTEM BE REPEATED.

FOR MANY YEARS, AIRPORT OPERATORS, AIRLINES, AND AIR TRAVELLERS HAVE BEEN FORCED TO PUT UP WITH INADEQUATE INTERNATIONAL ARRIVING PASSENGER PROCESSING. BEFORE ANY USER FEES ARE EXTENDED OR NEW CHARGES IMPOSED, WE BELIEVE CONGRESS AND THIS SUBCOMMITTEE SHOULD SCRUTINIZE THE WHOLE ISSUE OF USER FEE APPLICATIONS.

IN CONCLUSION, MR. CHAIRMAN, ALTHOUGH SOME OF MY REMARKS HAVE BEEN CRITICAL OF INS, I HAVE NOTHING BUT THE HIGHEST OF RESPECT FOR THE WORK THEY DO. THEY HAVE DONE A REMARKABLE JOB UNDER THE CIRCUMSTANCES BUT THEY MUST BE GIVEN THE PROPER RESOURCES TO STREAMLINE AND UPGRADE THE INSPECTION SERVICE. THIS SUBCOMMITTEE MUST EXERCISE ITS POWERS TO ENSURE THAT REASONABLE STAFFING AND PROCEDURAL STANDARDS CAN BE PUT IN PLACE AT INTERNATIONAL AIRPORTS FOR IMMIGRATION. FISCAL YEAR 1988 APPROPRIATIONS FOR INS MUST BE INCREASED TO UTILIZE FULLY USER FEE REVENUES AND PROVIDE ADDITIONAL INSPECTORS AT INTERNATIONAL AIRPORTS.

STATEMENT OF JAMES K. HICKEY, ASSISTANT DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Senator HOLLINGS. Mr. Hickey?

Mr. HICKEY. Mr. Chairman, thank you for the opportunity to appear before you today to testify in support of the fiscal year 1988 budget request for the Immigration and Naturalization Service. My name is James Hickey. I am the assistant director of FAIR, Federation of American Immigration Reform, a national nonprofit organization working to educate the American people to the problems of uncontrollable immigration.

At the close of the 99th Congress, this body passed a new immigration law that, if properly enforced, will control the flow of illegal aliens into the United States.

I am here today in support of the funding levels that were authorized in the Immigration Reform and Control Act of 1986. This landmark legislation represents the most significant overhaul of our Nation's immigration laws in 35 years. But Congress should not be lulled into thinking that having approved this legislation, the problem of illegal immigration will simply disappear. In order for this law to do what is intended, it is up to Congress to provide adequate funding for its implementation.

I would like to cover four quick major areas concerning the bill and where funding is needed. Congress understood the monumental new responsibilities that this law will give to the INS when it authorized funding in the amount of $422 million in fiscal year 1987, and $419 million in fiscal year 1988.

The administration has cut that request to $137 million in 1987 and $194 million in 1988. We believe that fiscal year 1988 will be the make or break year for the new law, and we appeal to the subcommittee to provide the necessary funding to make the law work.

We must demonstrate our resolve right from the outset and send a message to the rest of the world that the United States is intent on controlling illegal immigration. With passage of the new act, the INS workload has vastly expanded to include new enforcement of employer sanctions; the administration of a legalization program for approximately 3.9 million people who may apply for that program; increased border enforcement; and administration of a special agricultural worker program, while at the same time keeping fraud to a minimum and undertaking all the myriad of other responsibilities.

The funding levels requested have not kept pace with the dramatic increase in INS tests. For example, the new law creates a whole new category of investigators for employer sanctions. There are some 8 million employers nationwide. The new law carries funding for only 340 new employer sanctions investigators.

There are no investigators for legalization, fraud or for the special agricultural program, and given the fact that 3.9 million people may come through, given the numbers and the benefit, the quality of the benefit conferred, the potential for fraud may be enormous.

For the border patrols, another area of concern, the law mandates a 50-percent increase. The request from the administration will give it a 14-percent increase, about 400 versus 1,800 new agents.

Mr. Chairman, besides that, the Immigration and Naturalization Service must undertake its business as usual for enforcing current immigration laws. The magnitude of this test can be illustrated with two examples: One, that all adjustments to permanent status of aliens there has been found to be a 40-percent fraudulent rate. In the immigration-related marriages, it has been found to be 33-percent fradulent rate.

In short, the duties and responsibilities of the INS have expanded enormously and skyrocketed. We hope that this subcommittee will provide the necessary funding to give the bill a chance to work and make it viable for this country.

Thank you for this opportunity.

Senator HOLLINGS. Well, we thank you very, very much. We appreciate you gentlemen carrying this forward.

[The prepared statement of James K. Hickey follows:]

PREPARED STATEMENT OF JAMES K. HICKEY

ON BEHALF OF

THE FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO TESTIFY IN REGARD TO THE FISCAL YEAR 1988 BUDGET REQUEST FOR THE IMMIGRATION AND NATURALIZATION SERVICE.

MY NAME IS JIM HICKEY. I AM THE ASSISTANT DIRECTOR OF FAIR, THE FEDERATION FOR AMERICAN IMMIGRATION REFORM. FAIR IS A NATIONAL NON-PROFIT MEMBERSHIP ORGANIZATION WORKING TO EDUCATE THE AMERICAN PUBLIC ABOUT THE NEED TO REFORM U.S. IMMIGRATION POLICY TO REFLECT THE REALITIES OF THE 1980'S. FAIR BELIEVES THAT EVERY IMMIGRANT SHOULD BE A LEGAL IMMIGRANT; THAT THE U.S. SHOULD SET A COMPREHENSIVE CEILING ON LEGAL IMMIGRATION IN ACCORDANCE WITH THE DEMOGRAPHIC, NATURAL RESOURCE AND ECONOMIC NEEDS OF THE UNITED STATES SO AS NOT TO UNDERMINE OPPORTUNITIES FOR AMERICA'S POOR AND DISADVANTAGED WHO SEEK TO IMPROVE THEIR WAGES AND WORKING CONDITIONS; AND THAT U.S. IMMIGRATION POLICY SHOULD NOT FAVOR OR DISCRIMINATE ON THE BASIS OF RACE, RELIGION, OR NATIONAL ORIGIN.

AT THE CLOSE OF THE 99TH CONGRESS, THIS BODY APPROVED A NEW IMMIGRATION LAW THAT IF PROPERLY ENFORCED WILL CONTROL THE FLOW OF ILLEGAL ALIENS ENTERING THE UNITED STATES. I AM HERE TODAY IN SUPPORT OF THE FUNDING LEVELS THAT WERE AUTHORIZED IN THE IMMIGRATION REFORM AND CONTROL ACT OF 1986. THIS LANDMARK LEGISLATION REPRESENTS THE MOST SIGNIFICANT OVERHAUL OF OUR NATION'S IMMIGRATION LAWS IN 35 YEARS. BUT CONGRESS SHOULD NOT BE LULLED INTO BELIEVING THAT HAVING APPROVED THIS LEGISLATION THE PROBLEM OF ILLEGAL IMMIGRATION WILL SIMPLY DISAPPEAR. IN ORDER FOR THIS LAW TO DO WHAT IT WAS INTENDED, IT IS UP TO CONGRESS TO PROVIDE ADEQUATE FUNDING FOR ITS IMPLEMENTATION.

MR. CHAIRMAN, OVER THE YEARS, REPRESENTATIVES OF FAIR HAVE TESTIFIED BEFORE YOUR SUBCOMMITTEE IN SUPPORT OF ADDITIONAL FUNDING FOR THE INS. EACH TIME YOU CORRECTLY EXPRESSED THE VIEW THAT WHAT WAS NEEDED BEFORE A SUBSTANTIAL INCREASE IN FUNDING WAS A MORE VIABLE IMMIGRATION POLICY. FORTUNATELY, A MAJORITY OF YOUR COLLEAGUES

FINALLY CAME AROUND TO YOUR POINT OF VIEW AND APPROVED A VIABLE FORMULA FOR REGAINING CONTROL OF THIS COUNTRY'S IMMIGRATION POLICY.

CONGRESS UNDERSTOOD THE MONUMENTAL NEW RESPONSIBILITIES THE INS WOULD HAVE TO UNDERTAKE UNDER THE NEW LAW AND AUTHORIZED ADDITIONAL FUNDING IN THE AMOUNT OF $422 MILLION FOR FISCAL 1987 AND $419 MILLION FOR FISCAL 1988. HOWEVER, THE BUDGET REQUEST SUBMITTED BY THE ADMINISTRATION DOES NOT REFLECT THESE AUTHORIZED INCREASES. INSTEAD, ONLY $137 MILLION IN ADDITIONAL FUNDS HAS BEEN REQUESTED FOR 1987, REDUCED TO $109 MILLION BY THE HOUSE ACROSS-THE-BOARD CUT. IN THE OVERALL 1988 INS BUDGET, ONLY $194 MILLION HAS BEEN REQUESTED FOR THE NEW LAW. THE FUNDING REQUEST OF AN ADDITIONAL $194 MILLION FOR FISCAL 1988 IS LESS THAN HALF OF WHAT CONGRESS AUTHORIZED TO IMPLEMENT THE NEW LAW.

FAIR BELIEVES THAT FISCAL 1988 WILL BE THE MAKE-OR-BREAK YEAR FOR THE NEW LAW AND WE APPEAL TO THIS SUBCOMMITTEE TO PROVIDE THE NECESSARY FUNDING TO MAKE THE LAW WORK. THOUGH PRESIDENT REAGAN SIGNED IT INTO LAW LAST NOVEMBER 6, ALL FACETS OF THIS VERY COMPLEX LEGISLATION WILL NOT BE FULLY IMPLEMENTED UNTIL SEPTEMBER 1, OR THE FINAL MONTH OF FY 1987. I'M NOT SURE WHO FIRST SAID IT, AND I'M SURE IT WAS IN A DIFFERENT CONTEXT, BUT FIRST IMPRESSIONS ARE LASTING IMPRESSIONS. IF WE ARE TO SEND A MESSAGE TO THE REST OF THE WORLD THAT WE ARE SERIOUS ABOUT CONTROLLING ILLEGAL IMMIGRATION, MR. CHAIRMAN, WE MUST DEMONSTRATE OUR RESOLVE RIGHT FROM THE OUTSET. AS I WILL ELABORATE ON LATER IN MY TESTIMONY, CONTROLLING ILLEGAL IMMIGRATION WILL, IN THE LONG RUN, BE A PRUDENT INVESTMENT OF THE TAXPAYERS' MONEY.

THEREFORE, I AM HERE TODAY TO SUPPORT THE FUNDING LEVELS THAT WERE AUTHORIZED IN THE IMMIGRATION REFORM AND CONTROL ACT OF 1986. MR. CHAIRMAN, LET ME TAKE A MOMENT TO DESCRIBE THE TREMENDOUS RESPONSIBILITIES THAT FACE THE INS AND WHY FAIR BELIEVES THE INS NEEDS ADDITIONAL RESOURCES THAN WHAT HAS BEEN REQUESTED. WITH PASSAGE OF THE IMMIGRATION REFORM AND CONTROL ACT, THE INS'S WORKLOAD HAS BEEN VASTLY EXPANDED TO INCLUDE ENFORCEMENT OF EMPLOYER SANCTIONS, INCREASED BORDER ENFORCEMENT, ADMINISTRATION OF THE LEGALIZATION PROGRAM FOR A POTENTIAL 3.9 MILLION APPLICANTS, AND ADMINISTRATION OF THE SPECIAL AGRICULTURAL WORKER PROGRAM, WHILE AT THE SAME TIME KEEPING FRAUD TO A MINIMUM. THESE NEW RESPONSIBILITIES ARE IN

ADDITION TO AN ALREADY STAGGERING WORKLOAD THE INS CURRENTLY PERFORMS. WITH A STAFF SMALLER THAN THAT OF THE NEW YORK CITY POLICE DEPARTMENT, THE INS MUST PATROL 2,000 MILES OF LAND BORDER WITH MEXICO, OVER 3,750 MILES OF LAND BORDER WITH CANADA, ADMIT OR DENY 328 MILLION PERSONS AT OUR PORTS OF ENTRY EACH YEAR, KEEP NATURALIZATION RECORDS AND RECORDS ON PERMANENT RESIDENT ALIENS, EXTEND VISAS HELD BY FOREIGN VISITORS, DEVELOP SECURE DOCUMENTS FOR ALIEN IDENTIFICATION, CONTROL AND DEPORT CRIMINAL ALIENS, AND INVESTIGATE THOUSANDS OF VIOLATIONS OF THE IMMIGRATION AND NATIONALITY ACT. YET THE FUNDING LEVELS REQUESTED HAVE NOT KEPT PACE WITH THE DRAMATIC INCREASE IN INS TASKS. IN FACT, I WOULD LIKE TO GIVE YOU AN IDEA OF HOW UNDERFUNDED THE INS ACTUALLY IS BY DISCUSSING BRIEFLY THE VARIOUS ENFORCEMENT AREAS JUST MENTIONED AND THE MAGNITUDE OF THE JOB AT HAND. AS I DESCRIBE WHAT IS ENTAILED IN CARRYING OUT EACH OF THESE RESPONSIBILITIES, THE NEED FOR THE ADDITIONAL $419 MILLION IN FUNDING CALLED FOR IN THE ACT WILL BE OBVIOUS.

EMPLOYER SANCTIONS ENFORCEMENT

WE COMMEND TO YOU A NEW PUBLICATION ON THE EXPERIENCE WITH EMPLOYER SANCTIONS IN EUROPE, PARTICULARLY "EUROPE'S LESSONS FOR AMERICA," BY FORMER UNDERSECRETARY OF LABOR MALCOLM R. LOVELL, JR. (CENTER FOR IMMIGRATION STUDIES PAPER 3, WASHINGTON, D.C.). SECRETARY LOVELL RECOMMENDS THAT, "THE INS ITSELF MUST RECEIVE SIGNIFICANTLY GREATER RESOURCES IF IT IS TO MAKE EMPLOYER SANCTIONS EFFECTIVE. IT WILL REQUIRE THE FULL $900 MILLION ADDITION CALLED FOR IN THE REFORM LEGISLATION OVER THE NEXT TWO YEARS, WITH THAT HIGHER LEVEL OF SPENDING SUSTAINED IN ENSUING YEARS" (P. 42).

PASSAGE OF THE IMMIGRATION REFORM AND CONTROL ACT CREATED WITHIN THE INS A WHOLE NEW CATEGORY OF INVESTIGATIONS: INVESTIGATORS TO ENFORCE EMPLOYER SANCTIONS, OR MAKE SURE THAT THE PROHIBITION AGAINST HIRING ILLEGAL ALIENS IS HEEDED. THE CORNERSTONE OF IMMIGRATION REFORM HAS ALWAYS BEEN EMPLOYER SANCTIONS. THE NEW LAW WHICH WAS SEVEN YEARS IN THE MAKING, IS FOUNDED ON THE WORK OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, WHICH WAS CHAIRED BY FATHER THEODORE M. HESBURGH. AFTER STUDYING THE ISSUE EXHAUSTIVELY, IT WAS THE FINDING OF THE SELECT COMMISSION THAT EMPLOYER SANCTIONS IS THE ESSENTIAL ELEMENT IN THE BATTLE TO TURN OFF THE JOB MAGNET DRAWING ILLEGAL IMMIGRANTS TO THE UNITED STATES. CONGRESS HAS NOW ADOPTED THAT PRINCIPLE.

BUT WEANING EMPLOYERS WHO HAVE GOTTEN USED TO CHEAP, EXPLOITABLE LABOR FROM ILLEGAL IMMIGRANTS WILL BE DIFFICULT. MOST EMPLOYERS ARE HONEST, LAW-ABIDING MEMBERS OF SOCIETY AND WILL COMPLY SIMPLY BECAUSE A PROHIBITION AGAINST HIRING ILLEGAL ALIENS IS NOW THE LAW OF THE LAND. BUT THE TEMPTATION TO CONTINUE USING ILLEGAL ALIEN LABOR IS GREAT AND UNLESS WE SHOW A COMMITMENT TO ENFORCING IT, EMPLOYER SANCTIONS WILL SOON CARRY ALL THE WEIGHT AND RESPECT OF THE 55 MILE PER HOUR SPEED LIMIT. A REPORT IN THE MARCH 1, 1987 HOUSTON POST ILLUSTRATES HOW ENTICING THAT SOURCE OF CHEAP LABOR IS. ONE EMPLOYER QUESTIONED ON HER ATTITUDE ABOUT EMPLOYER SANCTIONS STATED: "WE'VE GOT TO PAY FOR OUR LABOR NOW."

CONSIDER ALSO, THAT JUST TWO MONTHS AGO IT REQUIRED A COURT ORDER TO FORCE THE DEPARTMENT OF LABOR TO ISSUE GUIDELINES TO AGRICULTURAL EMPLOYERS TO PROVIDE WORKERS IN THE FIELDS WITH SUCH BASIC HUMAN NECESSITIES AS DRINKING WATER AND TOILET FACILITIES. CAN WE REALLY ACCEPT ON FAITH THAT EMPLOYERS WHO NEEDED A COURT ORDER TO TREAT THEIR EMPLOYEES LIKE HUMAN BEINGS ARE GOING TO ABIDE BY EMPLOYER SANCTIONS RULES UNLESS THEY KNOW SOMEONE IS LOOKING OVER THEIR SHOULDERS?

IF ONE UNDERSTANDS HOW CENTRAL EMPLOYER SANCTIONS ARE TO A MEANINGFUL IMMIGRATION REFORM POLICY, IT CAN BE NOTHING LESS THAN DISMAYING TO FIND THAT THE BUDGET REQUEST SUBMITTED BY THE ADMINISTRATION WILL FUND NO MORE THAN 340 INVESTIGATORS NATIONWIDE TO ENFORCE SANCTIONS. THIS NUMBER IS ALARMINGLY LOW WHEN ONE CONSIDERS THAT IN ADDITION TO ENFORCING SANCTIONS, THESE SAME 340 INVESTIGATORS WILL ALSO BE RESPONSIBLE FOR INVESTIGATING FRAUD UNDER THE LEGALIZATION AND AGRICULTURAL PROGRAMS. THERE IS NO FUNDING REQUESTED FOR THESE ADDITIONAL RESPONSIBILITIES.

ALTHOUGH THE ADMINISTRATION REQUESTED FUNDING FOR 932 ADDITIONAL INVESTIGATIONS POSITIONS UNDER IRCA, ONLY 340 INVESTIGATORS WILL ACTUALLY BE ENFORCING EMPLOYER SANCTIONS. THE REST OF THESE POSITIONS WILL BE SUPPORT PERSONNEL, INVESTIGATORS ASSIGNED TO THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

(SAVE) PROGRAM, INVESTIGATIONS ON THE BORDER, AND DEPORTATION OF CRIMINAL ALIENS.

TO GIVE A ROUGH ILLUSTRATION OF HOW INADEQUATE A MERE 340 INVESTIGATORS ARE TO DO THE JOB OF ENFORCING SANCTIONS NATIONWIDE, CONSIDER THIS: THERE ARE ROUGHLY THREE MILLION EMPLOYERS IN THE U.S. THERE MAY BE FOUR MILLION AMNESTY APPLICANTS. IF THERE ARE ONLY 340 INVESTIGATORS FOR BOTH SANCTIONS ENFORCEMENT AND AMNESTY FRAUD, THEN EACH INVESTIGATOR IS RESPONSIBLE FOR INVESTIGATING APPROXIMATELY 8,800 EMPLOYERS AND REVIEWING 8,800 AMNESTY APPLICATIONS FOR FRAUD. GIVEN ONE YEAR OF A STANDARD 255 WORKDAYS, EACH INVESTIGATOR WOULD SPEND AN AVERAGE 7 MINUTES FOR EACH INVESTIGATION. WITH SUCH A SCARCITY OF INVESTIGATORS TO ENFORCE THE LAW, WHAT WILL ENSURE THAT EMPLOYER SANCTIONS WILL BE TAKEN SERIOUSLY? AND HOW CAN THE INTEGRITY OF THE AMNESTY PROGRAM BE MAINTAINED IF THERE ARE NO INVESTIGATORS DEVOTED SOLELY TO CROSS-REFERENCING AND VERIFYING THE INFORMATION CONTAINED ON AMNESTY APPLICATIONS?

DETECTION OF LEGALIZATION FRAUD

NEXT WE COME TO THE TASK OF LEGALIZING ILLEGAL ALIENS GRANTED AMNESTY UNDER THE NEW LAW. IT IS ESTIMATED THAT 3.9 MILLION ALIENS WILL BE ELIGIBLE FOR LEGALIZATION. CONSIDERING THE NUMBER OF ALIENS INVOLVED AND THE BENEFIT BEING GRANTED, THE POTENTIAL FOR FRAUD IN THIS AREA IS ENORMOUS. MOREOVER, IF CURRENT AND PAST TRENDS ARE ANY INDICATION, THERE IS NO REASON TO BELIEVE THERE WON'T BE RAMPANT FRAUD IN THE AMNESTY PROGRAM.

AS I MENTIONED BEFORE, IF ONE STUDIES THE BUDGET CHARTS, ONE WILL NOTICE THAT THERE IS **NO FUNDING** AT ALL REQUESTED FOR AMNESTY INVESTIGATIONS. THE ONLY INVESTIGATORS OF AMNESTY FRAUD ARE THE SAME 340 INVESTIGATORS ASSIGNED TO EMPLOYER SANCTIONS VIOLATIONS. THE FEES PAID BY THE AMNESTY APPLICANT WILL COVER ONLY PROCESSING COSTS OF THE CLAIMANTS' ELIGIBILITY. HOWEVER, UNLESS INS IS GIVEN THE RESOURCES TO THOROUGHLY INVESTIGATE AND WEED OUT FRAUDULENT AMNESTY CLAIMS FROM THE VERY OUTSET, THE SERVICE WILL SOON FIND ITSELF INUNDATED WITH QUESTIONABLE LEGALIZATION APPLICATIONS.

IF 3.9 MILLION ALIENS APPLY FOR AMNESTY, EVEN A 10 PERCENT

FRAUD RATE WOULD MEAN 390,000 FRAUDULENT APPLICATIONS. I JUST SPOKE TO THE INS REGIONAL OFFICE IN SAN PEDRO, AND WAS INFORMED THAT THE SAN DIEGO DISTRICT OFFICE ARRESTED SOMEONE LAST MONTH TRYING TO SELL FALSE RENT RECEIPTS TO USE ON THE AMNESTY APPLICATION. THE REGIONAL OFFICE ALSO TOLD ME THERE ARE REPORTS OF VENDORS SELLING ENTIRE PACKETS OF FRAUDULENT DOCUMENTS CONTAINING FALSE EMPLOYMENT RECORDS, RENT RECEIPTS, UTILITY BILLS, ETC.--IN SHORT, ALL THE DOCUMENTARY PROOF NEEDED TO ESTABLISH A SOLID CLAIM TO AMNESTY. THE "WORD ON THE STREET" IS THAT SUCH PACKETS PROMISING A FAST TRACK TO AMNESTY ARE SELLING FOR $1,000 EACH.

TO ILLUSTRATE THE SEVERE SHORTAGE OF SANCTIONS AND AMNESTY INVESTIGATORS, LET ME POINT OUT THE INS WANTED 350 ADDITIONAL INVESTIGATORS JUST TO WORK ON AMNESTY FRAUD IN ADDITION TO THE 340 SANCTIONS INVESTIGATORS DISCUSSED EARLIER. BUT FUNDING FOR THE 350 AGENTS NEVER MADE IT INTO THE BUDGET REQUEST AND THE OFFICIAL INS POSITION IS SILENT ON THIS NEED FOR ADDITIONAL INVESTIGATORS. SINCE A FULL TIME EQUIVALENT (FTE) INVESTIGATOR COSTS THE INS $50,722 EACH (INCLUDING TRAINING COSTS), THE INS WOULD NEED AN ADDITIONAL $17,750,000 TO FUND THE 350 FRAUD INVESTIGATORS FOR ONE YEAR. INSTEAD, NO FRAUD INVESTIGATORS WILL BE FUNDED. HOW CAN THE INTEGRITY OF THE PROGRAM BE MAINTAINED WITHOUT PROPER INVESTIGATIONS INTO THE TRUTHFULNESS OF THE AMNESTY APPLICATIONS?

INCREASED BORDER ENFORCEMENT

THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 ALSO CALLS FOR THE HIRING OF AN ADDITIONAL 1,848 BORDER PATROL AGENTS BY THE END OF FISCAL 1988. THE BORDER PATROL IS OUR COUNTRY'S FIRST LINE OF DEFENSE AGAINST ILLEGAL ENTRY TO THE UNITED STATES. DESPITE THE ENORMOUS TASK OF MONITORING THE 2,000 MILE BORDER WE SHARE WITH MEXICO, LET ALONE THE 3,750 MILE BORDER WE SHARE WITH CANADA, THERE ARE FEWER AGENTS ON DUTY AT ANY ONE TIME ALONG THE BORDER THAN THERE ARE POLICE OFFICERS GUARDING US ON CAPITOL HILL. AT THE END OF FY 1986 THERE WERE ONLY 3,238 BORDER PATROL AGENTS ON DUTY. THAT SAME YEAR, THE BORDER PATROL APPREHENDED 1,700,000 ILLEGAL ALIENS. THAT WORKS OUT TO MORE THAN 525 ARRESTS PER

OFFICER--FAR MORE THAN THE AVERAGE POLICE OFFICER ON ANY MAJOR METROPOLITAN POLICE FORCE MAKES IN AN ENTIRE CAREER. EVEN HAD THERE BEEN NO NEW IMMIGRATION LAW, THE NEED TO AUGMENT OUR CONTROL OF THE BORDER IS SELF-EVIDENT.

THERE WAS AN INITIAL DECLINE IN THE NUMBER OF BORDER APPREHENSIONS AFTER PRESIDENT REAGAN SIGNED THE NEW LAW ON NOVEMBER 6, BUT IN RECENT WEEKS THE FLOW OF ILLEGAL ALIENS ACROSS THE U.S.-MEXICAN BORDER IS RISING AGAIN. AT CURRENT LEVELS, INS OFFICIALS ESTIMATE THAT APPREHENSIONS OF ILLEGAL IMMIGRANTS IN FY 1987 WILL BE THE SECOND HIGHEST IN HISTORY.

EVEN MORE DISTURBING, CRIMINAL ALIEN APPREHENSIONS BY THE PATROL HAVE INCREASED BY OVER 35 PERCENT FROM NOVEMBER 1986 TO FEBRUARY 1987. BORDER PATROL NARCOTIC INTERDICTIONS ARE BREAKING ALL PREVIOUS PREDICTIONS WITH FIRST QUARTER FY 1987 SEIZURES EXCEEDING THE TOTAL YEARLY SEIZURES MADE JUST FOUR YEARS AGO. THE BORDER PATROL IS ALSO EXPERIENCING A CONCOMITANT INCREASE IN VIOLENT ENCOUNTERS EFFECTED BY ARMED AND DANGEROUS ILLEGAL IMMIGRANTS AND SMUGGLERS.

MR. CHAIRMAN, CONGRESS RECOGNIZED THE URGENCY OF THE DEEPENING CRISIS ON THE BORDER AND MANDATED A 50 PERCENT INCREASE IN BORDER PATROL AGENTS. YET THE ADMINISTRATION'S BUDGET REQUEST WILL FUND LESS THAN A 15 PERCENT INCREASE, WHICH WORKS OUT TO LESS THAN 500 NEW AGENTS AS I WILL EXPLAIN. INS CLAIMS THAT THEY CANNOT PLACE MORE AGENTS ON THE BORDER BY THE END OF 1988 BECAUSE OF THE TIME IT TAKES TO RECRUIT, HIRE, AND TRAIN NEW AGENTS. WHILE IT IS TRUE THAT THERE IS A LAG TIME INVOLVED, LET ME STATE FOR THE RECORD THAT IN 1985, THE INS WAS ABLE TO RUN 25 CLASSES IN A SINGLE YEAR AND PLACE OVER 1,000 NEW AGENTS ON-LINE IN A 14-MONTH PERIOD. YET UNDER THE CURRENT BUDGET REQUEST, ONLY 23 CLASSES WILL BE RUN OVER TWO YEARS (9 IN FY 87 AND 14 IN FY88).

FIVE CLASSES PER YEAR ARE NEEDED JUST TO OFFSET ATTRITION IN THE BORDER PATROL. THIS LEAVES 13 CLASSES OVER TWO YEARS FOR INCREASING THE BORDER PATROL. IF ONLY 13 CLASSES WILL BE DEVOTED SOLELY TO INCREASES IN THE PATROL AFTER ACCOUNTING FOR ATTRITION, THIS AMOUNTS TO ONLY 455 NEW AGENTS, A FAR CRY FROM THE 1,848 CONGRESS REQUIRED IN IRCA. THIS IS ONLY A FOURTEEN PERCENT INCREASE IN THE BORDER PATROL, NOT A FIFTY PERCENT INCREASE.

INTERIOR INVESTIGATIONS

THE IMMIGRATION AND NATURALIZATION SERVICE ALSO MUST CONTINUE ITS CURRENT ACTIVITIES ENFORCING THE IMMIGRATION LAWS IN THE UNITED STATES. THE SERVICE'S EFFORTS IN INVESTIGATING IMMIGRATION LAW VIOLATIONS INSIDE THE UNITED STATES SHOULD BE KEPT SEPARATE FROM THE ADDITIONAL TASKS OF ENFORCING EMPLOYER SANCTIONS. THESE JOBS INCLUDE INVESTIGATIONS OF MARRIAGE FRAUD, VISA OVERSTAYS, AND DETENTION AND DEPORTATION OF ILLEGAL AND CRIMINAL ALIENS. THE INVESTIGATIONS PROGRAM CONCENTRATES ON SERIOUS CASES INVOLVING CRIMINAL AND NARCOTICS VIOLATORS, MAJOR FRAUD CONSPIRACIES AND ALIENS WHO ATTEMPT TO RECEIVE BENEFITS ILLEGALLY FROM GOVERNMENT ENTITLEMENT PROGRAM.

ONE MEASURE OF THE MAGNITUDE OF THIS TASK IS THE NUMBER OF ILLEGAL IMMIGRANTS WHO TRY TO OBTAIN PERMANENT RESIDENCE FRAUDULENTLY. LAST YEAR FORTY PERCENT OF THE APPLICATIONS FOR ADJUSTMENT OF STATUS WERE ESTIMATED TO BE FRAUDULENT. IN ADDITION, THE GENERAL ACCOUNTING OFFICE RECENTLY RELEASED A STUDY THAT FOUND THAT 33 PERCENT OF ALL MARRIAGES TO ALIEN SPOUSES WERE FRAUDULENT--THAT IS TO SAY, THE MARRIAGE WAS ENTERED INTO SOLELY FOR THE PURPOSE OF ACQUIRING PERMANENT RESIDENCE FOR THE ALIEN SPOUSE.

IN NEW YORK, ONE MARRIAGE FRAUD RING ARRANGED MORE THAN 75 FRAUDULENT MARRIAGES A YEAR. THE RINGLEADERS AVERAGED $100,000 A YEAR IN INCOME FROM THESE CRIMES. LAST YEAR CONGRESS PASSED A NEW ANTI-FRAUD BILL WHICH SHOULD HELP REDUCE THE INCIDENCE OF MARRIAGE FRAUD, BUT, LIKE EMPLOYER SANCTIONS, THE IMMIGRATION SERVICE MUST RECEIVE SUFFICIENT RESOURCES TO ENFORCE THIS NEW LAW.

THESE ACTIVITIES, THOUGH NOT AS GLAMOROUS AS THE NEWER PROJECTS ENFORCING THE IRCA, ARE JUST AS VITAL TO THE CONTROL OF OUR BORDERS, AND DESERVE FULL FUNDING AND ATTENTION FROM THE IMMIGRATION SERVICE. THERE ARE LESS THAN A THOUSAND INTERIOR INVESTIGATOR POSITIONS, FAR LESS THAN IN THE MID-1970'S. THE PROBLEM HAS GROWN SIGNIFICANTLY IN THE LAST DECADE, BUT THE RESOURCES FOR INTERIOR ENFORCEMENT HAVE NOT. THE SERVICE SHOULD NOT SIPHON FUNDS FROM THESE BASIC SERVICES TO AUGMENT THE NEWER PROJECTS WHICH RECEIVE MORE PUBLICITY.

INSPECTIONS

LIKE REGULAR INTERIOR INVESTIGATIONS, INSPECTIONS IS A CRUCIAL ELEMENT OF OUR IMMIGRATION ENFORCEMENT STRATEGY. INSPECTORS GUARD OUR PORTS OF ENTRY, IN CONJUNCTION WITH THE CUSTOMS SERVICE AND OTHER RELATED AGENCIES. LAST YEAR THE INSPECTIONS PROGRAM INSPECTED A TOTAL OF 328,000,000 PERSONS CROSSING INTO OUR COUNTRY AT PORTS OF ENTRY. OUT OF THIS NUMBER 728,000 ALIENS WERE TURNED AWAY BECAUSE THEY WERE NOT ELIGIBLE TO ENTER THE UNITED STATES. IF OUR INSPECTORS HAD NOT BEEN VIGILANT, THESE ALIENS WOULD HAVE ENTERED THE ENORMOUS POOL OF ILLEGAL IMMIGRANTS CURRENTLY IN THE UNITED STATES.

INSPECTIONS HAS BEEN THE SUBJECT OF MUCH CONGRESSIONAL ATTENTION IN CERTAIN LOCATIONS, BUT ONLY WHEN THE NUMBER OF PERSONS TRYING TO ENTER THE UNITED STATES HAS EXCEEDED THE CAPACITY FOR INSPECTION, RESULTING IN LONG DELAYS AND BACKUPS IN AIRPORTS AND LAND BORDER ENTRY POINTS. THE AVERAGE INSPECTOR INTERVIEWS AN AVERAGE OF 100 APPLICANTS FOR INSPECTION EACH HOUR. AT BUSY POINTS OF ENTRY, DURING PEAK PERIODS OF BORDER CROSSINGS, SOME INSPECTORS ARE FORCED TO EXAMINE HUNDREDS OF APPLICANTS EACH HOUR.

IN 1984, A FRAUD REDUCTION TASK FORCE REPORTED THAT PUTTING IN ENOUGH ADDITIONAL INSPECTORS TO ALLOW AN ADDITIONAL 2.5 SECONDS IN INSPECTIONS WOULD REDUCE THE FRAUDULENT ENTRIES BY 32%. A NEW BORDER CROSSING FEE SHOULD INCREASE THE NUMBER OF INSPECTORS ON DUTY, BUT THE ADMINISTRATION'S REQUEST IS STILL INADEQUATE TO SIGNIFICANTLY REDUCE FRAUD. THE ADMINISTRATION WOULD ADD ONLY 85 NEW INSPECTORS, A FIVE PERCENT INCREASE.

CONCLUSION

MR. CHAIRMAN, CONGRESS IS UNDER EXTREME PRESSURE TO CUT THE FEDERAL BUDGET DEFICIT, AND JUSTIFIABLY SO. CARRYING OUT THE PROVISIONS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 IS A COSTLY PROPOSITION. FAILING TO IMPLEMENT THE NEW LAW, HOWEVER, WILL BE EVEN MORE EXPENSIVE. FOR INSTANCE, IN FISCAL 1986, 71 PERCENT OF THE BABIES BORN IN PUBLIC HOSPITALS IN LOS ANGELES COUNTY WERE CHILDREN OF ILLEGAL ALIEN MOTHERS, AT A COST OF $14.8 MILLION IN UNREIMBURSED EXPENSES. $14.8 MILLION WAS JUST THE COST OF PROVIDING ONE PUBLIC SERVICE IN ONE METROPOLITAN AREA TO

ILLEGAL ALIENS!

THERE ARE OTHER COSTS, NOT AS EASILY DOCUMENTED, THAT MAKE EFFECTIVE BORDER CONTROL SEEM LIKE A BARGAIN. LAX BORDER ENFORCEMENT IS AN OPEN INVITATION TO DRUG SMUGGLERS AND OTHER CRIMINALS. IN 1985, NEWSWEEK MAGAZINE REPORTED, "AS MUCH AS ONE-THIRD OF THE COCAINE BOUND FOR THE UNITED STATES NOW COMES THROUGH MEXICO, AND THE TEXAS, ARIZONA AND CALIFORNIA BORDERS ARE PROVING AS POROUS TO THE FLOW OF DRUGS AS THEY ARE TO THE FLOW OF ILLEGAL IMMIGRANTS." INTERDICTION AT THE BORDER IS MONETARILY AND SOCIALLY CHEAPER THAN DEALING WITH THE PROBLEM ONCE DRUGS HAVE ENTERED THE COUNTRY. AND, IT WOULD BE NAIVE TO BELIEVE THAT THE TERRORISTS WHO HAVE MADE U.S. CITIZENS THE TARGETS OF THEIR VIOLENCE ALL OVER THE WORLD HAVE NOT CONSIDERED INFILTRATING THROUGH OUR BORDERS.

FAIR DOES NOT WANT TO STOP IMMIGRATION TO THE UNITED STATES. ALL OF US SHARE AN ABIDING RESPECT FOR AMERICA'S IMMIGRANT TRADITION. BUT ONLY BY MAKING OUR IMMIGRATION POLICIES WORK WILL WE BE ABLE TO PRESERVE THAT TRADITION.

ONLY A FEW COUNTRIES IN THE WORLD REMAIN OPEN TO IMMIGRATION, AND EVERY ONE OF THOSE IS CUTTING BACK ON IMMIGRATION. SOME, LIKE SWITZERLAND, HAVE VIRTUALLY SHUT THE DOOR.

WE DO NOT WANT TO SEE SUCH A BACKLASH DEVELOP IN THE UNITED STATES. FAIR STRONGLY URGES THAT CONGRESS PROVIDE THE NECESSARY FUNDING TO MAKE THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AN EFFECTIVE POLICY.

THANK YOU AGAIN FOR THE OPPORTUNITY TO ADDRESS THIS SUBCOMMITTEE.

STATEMENT OF M. RUPERT CUTLER, EXECUTIVE DIRECTOR, POPULATION-ENVIRONMENT BALANCE

Senator HOLLINGS. We have Mr. Cutler, who is director of Population-Environmental Balance.

Mr. CUTLER. Yes, sir.

Senator HOLLINGS. We have got it all in here. What is that group?

Mr. CUTLER. It is a mouthful, I admit it.

Senator HOLLINGS. Yes.

Mr. CUTLER. We used to be called the Environmental Fund, but no one knew that we were concerned about the effects of population growth on the environment. Today, we are concerned about the effects of immigration on the rate of population growth since immigration has accounted for about 40 percent of our population growth, which, in turn, is influencing the quality of our life.

So I am here this morning to testify on behalf of the Immigration and Naturalization Service in support of full funding of its budget as authorized by the 1986 law. I have submitted our testimony. It has some detail in it. I would just like to summarize six brief points:

One, that my organization was organized 14 years ago to advance the recommendations of the Rockefeller Commission on population growth and the American future, which recommended that the Nation prepare for a stabilized population to make the solution of our environmental and economic problems easier.

The second point is that our population is growing faster than that of any other industrialized nation. The result is growing environmental problems, including trash disposal, as the people in upper New York found out; air pollution; ground water contamination; farm land loss; not to mention longer commuting times and higher taxes to pay for the infrastructure and social services needed by a growing population.

The major environmental groups in this country, such as Audubon, the Wildlife Federation and the Sierra Club, have all acknowledged that population growth in this country is one of our most important environmental issues.

The third point is that immigration, again, is a source of 30 to 40 percent of current U.S. population growth. Therefore, immigration control is an important means of protecting the quality of life in this country.

Point four, the Simpson-Rodino Act passed just last year, if fully implemented, will reduce the illegal component of that flow of immigrants estimated at perhaps 2 million a year, but only if it is fully funded.

Point five, please adopt the budget appropriation for the Immigration and Naturalization Service for fiscal year 1988 of $1 billion and not the $839 million recommended by the administration. Full funding of the employer sanctions enforcement and border enforcement provisions of that law so that the INS can do its job is essential to bring our rate of population rate down eventually to zero we hope, to help protect the American environment.

Finally, I would like to note that Senator Hatfield, on May 8, introduced a bill, S. 1171, identical to this bill, that Congressman McCain introduced a bit earlier, H.R. 2212, that calls for the eventual stablilization of the U.S. population.

Enforcement of our immigration laws will be essential if that good policy goal is to be achieved. I thank you for the opportunity to testify.

Senator HOLLINGS. That Rockefeller study was affiliated with Paul Hopkins, who started that under the United Nations, if I remember correctly, and former Senator Tidings, I think, took it over.

Which Rockefeller is that when you say John D., III? I thought that was Jay, the Senator?

Mr. CUTLER. No; that is the same name. John D., IV.

Senator HOLLINGS. He is IV. So that is his father?

Mr. CUTLER. That is his uncle, I believe.

Senator HOLLINGS. That is his uncle. When was that study made, back in 1973?

Mr. CUTLER. It was 1969 to 1972.

Senator HOLLINGS. I see. We thank you very much for your appearance. We have got another vote going forward right now.

[Short recess.]

[The prepared statement of M. Rupert Cutler follows:]

POPULATION-ENVIRONMENT BALANCE, INC.

STATEMENT OF EXECUTIVE DIRECTOR M. RUPERT CUTLER

OF THE IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee:

I am Rupert Cutler, Executive Director of Population-Environment Balance, a private, nonprofit, membership assocation concerned about the growing contribution immigration is making to overpopulation-related environmental problems in the United States.

Our organization was founded in 1973 to advance the recommendations of the Commission on Population Growth and the American Future chaired by John D. Rockefeller 3rd. Concluding that "no substantial benefits will result from further growth of the Nation's population (and) that the gradual stabilization of our population would contribute significantly to the Nation's ability to solve its problems," the Rockefeller Commission recommended that immigration levels not be increased and that employer sanctions be adopted to decrease illegal immigration.

BALANCE supported passage of the employer sanctions provisions of the Simpson-Rodino bill signed into law last year. The thrust of our testimony today is to urge full funding of the immigration law enforcement program authorized by that Immigration Reform and Control Act of 1986.

The unique dimension of our testimony today is:

1. BALANCE disagrees with the OMB proposal that the INS base its "resources available for FY88" figure ($1 billion) on the questionable assumption that the fees to be charged by the INS for legalization and border-port inspection will make up the difference between the $839 million requested by the Administration for the INS and the $1 billion-plus authorized by the Congress in the Simpson-Rodino law.

2. BALANCE urges the Congress to: (a) appropriate immediately the entire $1 billion authorized for and needed by the INS in FY88 to implement the new sanctions and legalization programs, as well as its pre-existing authorities, and (b) direct that such income as is derived from the fees charged by the INS for legalization and border-port inspection be deposited in the Treasury without any "strings" regarding the future availablilty of such amounts to the INS.

INS FUNDING

Population-Environment Balance strongly urges the Congress to honor the INS authorization levels approved by Congress and signed into law by the President in November of 1986 in the Immigration Reform and Control Act. INS responsiblilities are extensively broadened by this act and must be complemented by a comparable budget increase for effective enforcement of the new law.

IMMIGRATION AND U.S. POPULATION GROWTH

Population-Environment Balance supports the $1 billion-per-year direct appropriation level for INS because uncontrolled immigration is having an enormous impact on the population growth rate of the United States, leading to local environmental and social stresses caused by overpopulation.

The United States takes more immigrants than all other countries in the world combined. In 1986, with over 600,000 legal immigrants, legal immigration was the source of 26 percent of annual U.S. population growth. Meanwhile, nearly 2 million illegal immigrants were arrested crossing our Southern border last year. If only as many crossed undetected as were apprehended, U.S. population growth for the year doubles. However, it is important to note that it is estimated that two to five aliens cross the border undetected, for each one caught. (New York Times, 8/3/86) Illegal immigration is a very sizable factor in population growth.

The incentives for illegal immigration to the United States are many and diverse. The two primary motivations have been job availability in the United States and the simplicity of crossing the border illegally. We thank the Congress for addressing both of these issues in the Immigration Reform and Control Act of 1986, by instituting employer sanctions and authorizing the strengthening of border enforcement.

However, neither of these vital and inextricably related initiatives will succeed without considerable additional resources to permit their enforcement. The authorization figures in the bill were very carefully thought out by Congress. We urge the committee to adopt them, rather than the figures in the President's budget, for the Immigration and Naturalization Service in FY 88.

INS must have adequate funding for Border enforcement. The Moorhead amendment in the new immigration law calls for a 50 percent increase of Border Patrol manpower. At the Administration's suggested funding level of $838,828,000, INS will open 1,848 new positions in the Border Patrol. This is 14% under the proposed staff increase envisaged in the new law.

Enforcement of employer sanctions must go hand in hand with enhanced border enforcement to be effective. Enforcement takes both manpower and support funds. To reduce the manpower involved in employer sanctions enforcement and to make it easier for employers to follow the sanctions guidelines, BALANCE recommends that the INS institute a social security call-in verification system.

The establishment of this system would be expensive--issuing new forge-proof cards, establishing a database to keep track of the numbers and requests for information, etc. However, in the long run, using this tool would likely lessen the burden of employer sanctions on INS, as well as making it easier and more likely for employers to obey the law. If such a system were implemented, eventually the social security card could be used as the sole form of identification for employment eligibility verification. The fewer types of documentation with which an employer must be familiar, the less the burden on the employer to recognize fraudulent documents.

POPULATION GROWTH IMPACTS THE ECONOMY AND ENVIRONMENT

The U.S. population stands today at over 242 million. If illegal immigration is stopped and the domestic fertility rate remains low, the U.S. population would grow to no more 261 million in the year 2000. But if illegal immigration remains uncontrolled, and fertility rates rise slightly--as they are doing today--the U.S. population could reach between 281 and 305 million by the year 2000. These figures are derived from our BALANCE data sheet, "U.S. Population Projections for 1980 to 2030," which examines a range of U.S. population scenarios and is attached herewith for the Committee's information (Appendix A). The difference of 40 million people between the above projections nearly equals the present-day populations of California and Texas.

The addition of 40 million people to the U.S. population in such a short period of time would undoubtedly lead to economic misery for many, particularly among least-advantaged citizens, in addition to severe environmental stress for all. The President's Commission on Population Growth and the American Future, which I quoted earlier, concluded that "no substantial benefits will result from further growth of the Nation's population, rather that the gradual stabilization of our population would contribute significantly to the Nation's ability to solve its problems. We have looked for, and have not found, any convincing economic argument for continued population growth . . . . The health of our country does not depend on it, nor does the vitality of business nor the welfare of the average person."

Rapid U.S. population growth will also slow our efforts to deal with already serious environmental problems in the U.S. Air pollution including acid rain, shortages of clean water, toxic chemical accumulation, soil erosion and siltation, loss of prime farmland, and endangerment of plant and animal species are among the numerous environmental problems which Population-Environment Balance associates with continued rapid population growth in the United States.

CONCLUSION

In conclusion, I wish to emphasize that elimination of illegal immigration is in our national interest, and enforcement of the Immigration Reform and Control Act of 1986 is essential. In light of this, I hope that you will consider the importance of maximum funding for the Immigration and Naturalization Service enforcement activities in FY88.

Thank you once again, Mr. Chairman for the opportunity to appear before this Committee.

APPENDIX A

POPULATION-ENVIRONMENT BALANCE
(Formerly The Environmental Fund)
1325 G Street, NW, Suite 1003
Washington, DC 20005-3104
(202) 879-3000

data:

Number 18

March, 1985

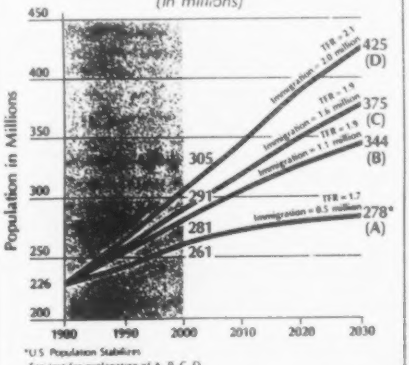
TEF's U.S. Population Projections for 1980-2030

In 1972, the Rockefeller Commission on Population and the American Future declared that "no substantial benefits would result from continued growth of the nation's population." Despite this warning, the United States has become the fastest growing industrialized nation in the world with little chance of reaching population stability without a concerted effort. There have been enough examples from other countries in the news recently to make us consider what effects an increase of a possible 68 million people in the next 15 years may have on the United States.

The figure below illustrates four different scenarios that—depending on which one we as a society choose to follow—will largely determine our futures. Each line of the figure has two variables that change: total fertility rate and annual net immigration. Changes in these two variables account for most of the changes in our population growth. Note that only the scenario for Line A will bring us to a stationary population by the year 2030, and *none* will bring us to stability sooner.

U.S. Population Projections from 1980-2030

(in millions)



*U.S. Population Stabilizes
See text for explanation of A, B, C, D
TFR = total fertility rate
Immigration = net annual legal & illegal immigration

Source: QUIC DATA™

Line A is the most optimistic scenario because it will yield the least population growth. Today, our total fertility rate is approximately 1.9. That means that each childbearing woman in the U.S. is having an average of 1.9 children in her lifetime. Line A suggests the possibility of reducing that average figure to 1.7 children per woman.

Line A also suggests that we have only 500,000 total immigrants each year. Our rate today is much higher, but if adequate immigration reform legislation is passed we might achieve the 500,000 figure. As can be seen, even with this lean, "best case" scenario, the population of our country will grow from 226 million in 1980 to 261 million by the year 2000 and 278 million by 2030, at which point population growth would stabilize.

Lines B and C represent a range between which our present growth lies. Currently, our total fertility rate is close to 1.9 and our level of annual net immigration is probably running between 1.1 million people a year to 1.6 million. (The uncertainty of the immigration estimate occurs because there is no accurate count of the *illegal* immigrants that are entering the U.S. in ever-increasing numbers.) At our present rate of growth, we would have between 281 and 291 million people in the U.S. by the year 2000, and between 344 and 375 million in less than 50 years. That means, at our present level of growth, we may add the equivalent of five Californias in most people's lifetimes. The possibility of population stabilization with these scenarios does not occur even by 2080, which is as far in the future as we have made projections.

Line D, the final projection, varies the numbers again to present another scenario that is entirely possible, given present conditions in the world and in our country. If the baby boomlet continues and expands, our fertility level may rise to 2.1, which is basically replacement level but on a base of the current large number of women of childbearing age. In addition, if the surge in illegal immigration

U.S. Population Projections (in millions), 1990-2030

Total Fertility Rate	1990	2000	2010	2020	2030
		Annual Net Immigration = 0 million			
1.7	243	252	255	255*	248
1.9	246	259	268	274	276*
2.1	249	265	277	289	296
		Annual Net Immigration = 0.5 million			
1.7	247	261	271	277	278*
1.9	250	269	284	298	307
2.1	253	275	294	313	328
		Annual Net Immigration = 1.1 million			
1.7	252	273	290	304	313
1.9	254	281	304	326	344
2.1	258	287	314	342	367
		Annual Net Immigration = 1.6 million			
1.7	255	283	307	327	342
1.9	258	291	320	350	375
2.1	262	297	331	367	399
		Annual Net Immigration = 2.0 million			
1.7	259	291	319	345	366
1.9	261	299	334	369	400
2.1	265	305	345	386	425

Source: The Environmental Fund: QUIC DATA II (resident population) projections as of 25 April 84

*U.S. Population Stabilizes

continues unchecked by any kind of enforceable immigration controls and employer fines for hiring illegal workers, we may very well see our net immigration level reach 2 million a year. There is anecdotal evidence from field staff of the U.S. Border Patrol and the Immigration and Naturalization Service that we may be at that high level already.

This final scenario would yield an increase in U.S. population of almost 80 million people between 1980 and 2000. That is the equivalent of more than three present-day Californias — our most populous state — in just 20 years. And then, looking to the future, we would grow to 425 million by 2030, almost 200 million more people than we had in 1980. The population of our whole country in 1969 was 200 million, and now we are facing the possibility of seeing twice that many people living in the same amount of space with the same or a depleted natural resource base within our lifetimes.

The implications of this incredible rate of growth have not been recognized by many otherwise clear-thinking people in this country. But, in fact, a rapidly growing population will radically change "the Americn way of life." Crowding will increase, standing in lines and making reservations long in advance for limited numbers of outdoor recreation areas will become common, ecological diversity will be lost, taxes and insurance premiums will climb, prime farmland will continue to be lost to urban sprawl, and water will become a fighting issue in some parts of the country. All of these problems and more will be associated with continued U.S. population growth.

Fortunately, we do not have to sit back and accept as fact that our children will be faced with the crises that such population growth will bring. If we act responsibly now by limiting our fertility to the 1.7 that is postulated in the low scenario and even more importantly, if we take as a serious obligation the enforcement of sound, new immigration laws that will eliminate illegal immigration and keep legal immigration to a level consistent with the supplies of natural resources that constitute our country's human "life support system" then the future we bequeath to our children and theirs may indeed be bright.

Judith Hinds (demographic
assistance by Lisa C. Olson)

The Environmental Fund believes that every major problem facing the United States as a nation and humanity as a whole becomes more difficult to solve as population increases.

APPENDIX B

BALANCE data

POPULATION-ENVIRONMENT BALANCE
☐ 1325 G STREET, N.W. ☐ SUITE 1003
☐ WASHINGTON, D.C. 20005
☐ 202/879-3000

Number 23
February 1987

Where Do the Immigrants Settle?

The United States currently accepts more immigrants for permanent resettlement than the rest of the world combined, and more legal and illegal immigrants than at any time in U.S. history.

Though immigration represents between 35 and 45 percent of U.S. population growth, most legal and illegal immigrants settle in just a handful of states—California, New York, Texas, Florida, and Illinois.

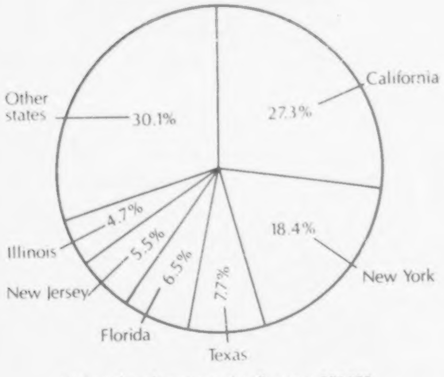
Legal Immigration

Legal immigration to the United States has tripled since 1965 and now averages between 500,000 and 600,000 persons a year—a population equal in size to that of Boston, Massachusetts.

Figure 1 indicates the intended residence of legal immigrants admitted to the United States in Fiscal Year 1985.

Figure 1

Estimated Percentage of Legal Immigrants by State



Total number of immigrants for all states is 570,009.

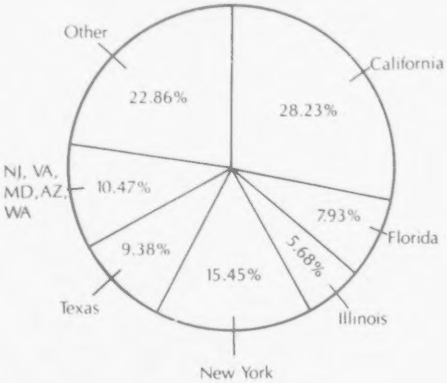
Source: Statistical Analysis Branch, U.S. Immigration and Naturalization Service.

Permanent Resident Aliens

The 1980 Census enumerated 5.38 million Permanent Resident Aliens living in the United States, with the largest number living in California (1.52 million), New York (832,000), Texas (505,000), Florida (427,000), Illinois (306,000), New Jersey (281,000), and Massachussetts (174,000). Between 1980 and 1986, four million new legal immigrants—

Figure 2

Estimated Percentage of Permanent Resident Aliens by State



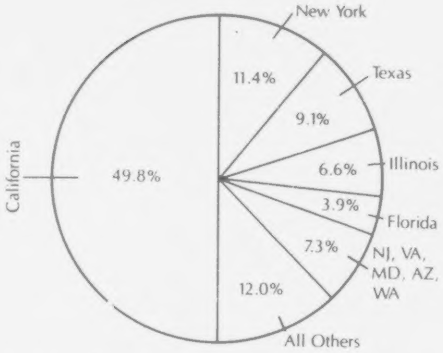
Based on data from the U.S. Census Bureau a population equal to that of Los Angeles, California and Phoenix, Arizona—were added to to the U.S. population. Figure 2 indicates where Permanent Resident Aliens enumerated in the 1980 Census were living.

Illegal Immigrants

Though no one knows how many illegal immigrants are living in the U.S. (see box below), most immigration scholars conservatively estimate that between four and eight million were permanently residing in the U.S. in 1985. Another two million illegal aliens may cross the U.S.-Mexico and U.S.-Canadian border every year, working on a seasonal basis in construction, agriculture, service and manufacturing industries.

Though the exact number of illegal aliens is unknown, careful analysis of 1980 Census data indicates the vast majority live in California, New York, Texas, Illinois, and Florida. Figure 3, based on analysis of 1980 Census data by Census Bureau demographers Jeffrey Passel and Karen Woodrow, provides a tentative estimate as to where the illegal alien population of the U.S. was living in 1980 and where they are probably still living today.

Figure 3
Estimated Percentage of Illegal Immigrants by State



Based on "Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State" by Jeffrey Passel and Karen Woodrow, paper presented at the annual meeting of the Population Association of America, May 3-5, 1984.

How Many Immigrants?

No one knows how many illegal immigrants are living in the U.S. or how many are entering every year. Illegal immigration, like the cash economy, tax fraud, and drug smuggling, is impossible to quantify because the millions of foreign nationals living clandestinely in our midst are unwilling to come forward to be counted.

Problems of enumeration, however, have not stopped rampant speculation. A host of demographers and statisticians have applied creative demographic and accounting techniques to come up with what they believe are "defensible" and "objective" estimates of the U.S. illegal alien population. Complicating their task has been lack of data on the age, sex and national origin of illegal immigrants, poor data on the number of repeat apprehensions of illegal immigrants, and a paucity of data on visa overstays. In the end, any estimate of the number of illegal aliens living in the U.S. is likely to be little more than an educated guess.

If we are trying to determine the impact of illegal immigration on the U.S. labor market, we need to know the number of people/years the illegal alien population of the U.S. works on an annual basis. If, however, we are trying to determine the number of people eligible for adjustment of status under a proposed legalization program, we need only count those persons who have continuously resided in the U.S. since a given amnesty eligibility date. If we are trying to gauge the effectiveness of the U.S. Immigration and Naturalization Service at apprehending illegal immigrants, we may find it useful to know how many illegal border crossings occur on a daily, monthly or annual basis.

In the "numbers game" of illegal immigration, definitions matter. Estimates can be managed up or down by embracing or excluding different illegal alien populations, such as border crossers, visa abusers, and migrant laborers.

In all likelihood, we will never know how many illegal aliens are living in the United States. The case can be made that we do not need to know. As Professor Vernon Briggs of Cornell University has noted, "The character of the entire process precludes the possibility that an actual tabulation of persons who immigrate illegally will ever be made. . . . Furthermore, it makes little conceptual difference whether the number of illegal immigrants in the nation is 3 million, 6 million, 9 million or 12 million. The precise number is irrelevant if we concede that the number of persons involved is substantial and is increasing annually."

Patrick Burns, *Director*
William Vogt Center
for U.S. Population Studies

APPENDIX C

BALANCE

PRESS RELEASE

Population-Environment Balance, Inc.
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Washington, D.C. 20005
(202) 879-3000

RELEASE:
Immediately
CONTACT:
Dick Rennick

Illegal Aliens A Major Cost To States Where They Settle

Washington, D.C.--Eight out of 10 illegal immigrants in the United States have settled in just five states--California, New York, Texas, Illinois, and Florida--placing an enormous financial burden on the taxpayers of those states, according to Population-Environment Balance, Inc., a group which advocates strict enforcement of immigration-control laws to protect the quality of life in the U.S.

"One way to define quality of life is in terms of discretionary income per family, and high state and local taxes to pay for health, education and welfare programs for illegal aliens reduces the discretionary income of every family in states where the illegals are concentrated," notes BALANCE Executive Director M. Rupert Cutler.

Cutler quoted U.S. Census Bureau figures and reports from state and local agencies to show that--

1. most illegals have chosen to live in the five states of California (49.8%), New York (11.4%), Texas (9.1%), Illinois (6.6%), and Florida (3.9%); and

2. large populations of illegals place heavy financial burdens on taxpayers in those states.

"These data show the need for strict enforcement of the new employers sanctions law, which penalizes employers who hire undocumented workers," Cutler said, arguing that "illegal immigration will not only continue to drive local taxes steeply upward but lead to even more overcrowded American cities."

The actual number of illegals in the U.S. is unknown, but Population-Environment Balance places the figure at somewhere between four and eight million.

Examples cited by BALANCE of how illegal aliens put a great financial burden on the taxpayers in the states where they live:

A 1984 study conducted by the Immigration and Naturalization Service (INS) revealed that illegal aliens contributed an average of $995 per year in taxes, but cost the states $1,977 per alien for social service costs.

In 1984, the California Employment Development Office estimated $100 million each year is spent on unemployment benefits to ineligible illegals. Los Angeles County in 1983 absorbed $99.5 million in medical costs for indigent illegals.

In Illinois, a 1982 study by the Attorney General's office found 50 percent of non-citizen unemployment insurance applicants were illegal aliens using fraudulent documents. Cost to the taxpayer was $50 million each year. The Arizona Hospital Association in 1983 estimated state taxpayers were paying $4.4 million a year in unpaid hospital bills for illegals.

Cutler noted the number of illegals permanently living in the U.S. has been augmented every year by approximately two million workers who cross the Mexican and Canadian borders to do seasonal work in agriculture, construction, service and manufacturing industries and do not return to their homelands.

APPENDIX D

Immigration, A Source of Problems, Should Be Limited

By M. Rupert Cutler

Once we could admit everybody.

Today, thoughtful people are coming to realize that the capacity of the United States to absorb more people is limited.

Some, in fact--pointing to worsening air quality, water supply, trash-disposal, and urban sprawl problems, spiraling welfare costs, and millions of unemployed Americans--contend we have passed the optimum population for this country and are now into a period of declining quality of life as our population continues to increase.

What should we do about it? The most logical way to achieve the desideratum of a stablized U.S. population is through adoption by the Congress of an annual limit on the number of immigrants allowed into this country for permanent resettlement--an "immigration ceiling." Senator Alan Simpson (R-WY) has indicated he may sponsor legislation this year to provide for just such a ceiling.

Today, immigration into the U.S.--both legal and illegal--is out of control. Accounting for at least a third of U.S. annual population growth (and we are the fastest-growing major industrialized nation on earth), this high level of immigration makes the solution of our already burdensome economic, social and environmental problems even more difficult.

Legal immigration to the U.S. has been at a high level for years. The number has tripled since 1965. In 1980, for example, more than 800,000 individuals were admitted into the country for permanent resettlement.

Of the over 14 million persons by which the U. S. population grew between 1980 and 1986, four million were legal immigrants--a number equal to the combined populations of Los Angeles and Phoenix. The current level of legal immigration is the highest since the early years of the century. When the probable number of illegal immigrants (possibly two million per year) is added to the known legal number, it becomes clear that there are more immigrants entering the U.S. than at any time in our history.

We have an immigration numerical quota system, but there is no hard and fast legal limit on the number of individuals who may be admitted. In addition, there are no firm limitations or stipulations regarding refugees, who are considered under a separate category. Any number of refugees can enter the U.S. each year with the approval of Congress.

Every other major country in the world has an immigration policy, with the numbers and kinds of immigrants allowed into the country clearly stated and effectively enforced. The numerical ceilings that are placed on the number of people who can enter these countries are constantly changing. Canada takes in the second largest annual influx of immigrants, after the U.S., with its annual limit of 90,000.

Australia and the United Kingdom accept some immigrants for permanent resettlement, but Japan, West Germany and France take in only miniscule numbers. Controls in these countries are frequently re-examined and reset, based on economic and demographic developments. Canada, in 1983, reduced the number of immigrant workers it admitted, and Mexico recently decided to issue only five-year visas.

The immigration-ceiling provisions included in Sen. Simpson's legislation would neither increase nor decrease current numbers, but merely stablize them to prevent future increases. The annual limit for legal immigration from all countries may be set at 270,000, with an additional 200,000 allowed for immediate relatives. This would set the "cap" at approximately 470,000--

twice the number allowed by all the other countries of the world combined.

Three U.S. metropolitan areas where both legal and illegal aliens are known to settle in sizeable numbers are Los Angeles, San Francisco, and Dallas-Fort Worth. Population-Environment Balance has studied the growth trends in these areas and has projected that Los Angeles will become the nation's largest city by the year 2000.

Its growth by 2.5 million people will be accompanied by a soaring cost of living. The cost of an average home may escalate from $150,000 to as much as four times the current median price. Similar increases in the cost of food, entertainment, household goods, insurance, commuting costs, and in property and sales taxes will be associated with this rapid growth.

The San Francisco Bay Area population will grow by one million people by the end of the century, with the cost of many goods doubling. California's cities in total will absorb one quarter of all legal immigrants.

Many also will settle in Texas. Dallas-Fort Worth's population is projected to be 4.3 million by 1995, an upswing of 21.3 percent in 10 years, with inflationary consequences comparable to that predicted for Los Angeles and San Francisco.

For 14 years, Population-Environment Balance has advocated the adoption of a national policy calling for a stabilized population as one means of protecting our nation's quality of life. To achieve this goal BALANCE believes it is essential to adopt an immigration ceiling and to strictly enforce the country's immigration laws. The benefits of such a policy will be improved economic opportunities and an enhanced quality of life for all Americans.

Fifteen years ago, a presidential advisory commission chaired by John D. Rockefeller, 3rd produced a landmark report entitled Population Growth and the American Future. Its recommendations included a call for a firm national policy on immigration. Stating that "the flow of immigrants (into the U.S.) should be closely regulated," the commission urged that there be no increase in immigration levels and that the national immigration policy be reviewed periodically to reflect changing demographic and other conditions.

Since the commission's report was issued, the U.S. population has grown from 208 million to 242 million. The Census Bureau predicts a net increase of 2.2 million this year, with births projected to reach their highest annual level since the mid-1960s. At this rate the nation's population could grow by another 30 or 35 million by the year 2000.

Our American standard of living is endangered by continued **population growth. The capacity of our "melting pot" is finite. Without a generous but firm national immigration policy, all other efforts to protect our quality of life are likely to be overwhelmed by the demands of a growing population.**

M. Rupert Cutler is executive director of Population-Environment Balance, a Washington, D.C.-based non-profit membership organization working to protect of the quality of life in the U.S. through population stabilization.

STATEMENT OF J. MICHAEL McWILLIAMS, BALTIMORE, MD, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Senator HOLLINGS. Mr. McWilliams?

Mr. MCWILLIAMS. Yes, sir.

Senator HOLLINGS. You may proceed.

Mr. MCWILLIAMS. Thank you, Senator. Good morning.

Senator HOLLINGS. Good morning.

Mr. MCWILLIAMS. I am Mike McWilliams, and I am an attorney in private practice in Baltimore, MD. I am chairman of the American Bar Association's 444 member house of delegates, our policymaking body.

The American Bar Association never has and does not now take the position that justice for our poor is an exclusive responsibility of our government; it is a responsibility to all. But the American lawyer has the knowledge and does assume a large measure of that responsibility.

In the last year, 83,000 attorneys in this country donated their time in representation of indigent clients in formal pro bono projects. There are countless other private attorneys representing persons on an individual basis.

The State of Florida, for example, conducted a survey which showed that Florida's private practitioners provided 669,000 hours of free legal services to the poor in 1986.

Conservatively, that is valued at $35 million. This is only one State, but it represents what is going on all over the country. This is a record which no other profession or trade in this country comes close to matching, and we are proud of it.

Senator HOLLINGS. Let me ask you about it, because my experience is new. Let's say you have got a case, you go over to the courthouse to which you were assigned and you must be tied up for a couple of days. Now they say you have public defenders. Are judges still assigning those cases, or do you do it on a pro bono basis?

Mr. MCWILLIAMS. The pro bono projects we are talking about now are civil cases and not public defender-type cases.

Senator HOLLINGS. On what basis are they taking those civil cases? What types of cases? Do they reach the lawyers, or how is the work distributed in the bar?

Mr. MCWILLIAMS. It varies from State-to-State and project-to-project. Generally, there is a volunteer organization that is a clearinghouse, an assignment center for the cases that are brought and that come forward.

In Maryland, for example, we have the Maryland Volunteer Lawyers Program, which is funded partially with Legal Services Corporation funds and for staffing purposes, mostly. But the lawyers who participate in Baltimore participate on a voluntary basis; there is no charge for their services.

Senator HOLLINGS. How many lawyers are there in operation?

Mr. MCWILLIAMS. I think now there are about 8,000 practicing lawyers in Maryland, and of those, I think there are about, oh, 2,000 to 2,500 in the program in Maryland. That is primarily in the Baltimore metropolitan area, where there is the greatest need.

Senator HOLLINGS. So the Legal Services office there assigns the work and calls the volunteers and sends clients around, that kind of thing?

Mr. MCWILLIAMS. The volunteer office does. The Legal Services Corporation main office in Maryland is the Maryland Legal Aid Bureau, which I think has close to 150 lawyers who are paid minimally by the Legal Services Corporation, as well as other grants, and the money raised from the Interest on Lawyers Trust Account [IOLTA] Program.

Senator HOLLINGS. Go right ahead.

Mr. MCWILLIAMS. Thank you, sir.

Senator HOLLINGS. You have got Lewis Farley that started this thing. That is how we have been able to keep it going with some of these things. [Laughter.]

Mr. MCWILLIAMS. Senator, the job is enormous, and it can't be handled simply by the Legal Services and legal profession alone. There are approximately 30 million poor people in this country, and recent studies demonstrated that the bulk of our society is only handling a small fraction of those needs.

We appreciate the stringent Federal budget situation, but we hope the Congress cannot lose sight of the goal of restoring a minimum access level of funding to the Corporation over the next several years.

Our suggested appropriation of $360 million represents a $305.5 million appropriation level at which the program has been frozen for the last 30 years, adjusted by inflation for those 3 years, bringing the funding level to $350 million.

We recommend an additional $9 million to restore the program to the fiscal year 1981 funding level on the minimum access goals which must be achieved. The $9 million is, admittedly, minimal, but it is important in that it has a symbolic value as an expression of our commitment to the future of legal services for the poor.

We have some specific concerns regarding allocation of the Corporation's appropriation which are addressed in some detail in my statement. Suffice it to say that the program is aimed at providing legal services to the poor, and that should be the top priority in the allocation of funds.

In conclusion, the American Bar Association believes that the Legal Services Corporation is operating a cost-effective, high-quality system for partially satisfying the legal needs of the poor. It is a system which effectively involves and utilizes a wide range of private resources.

However, the needs are enormous, and their satisfaction requires substantially increased public support. We urge that the Corporation be appropriated $360 million in fiscal year 1988.

[The prepared statement of J. Michael McWilliams follows:]

AMERICAN BAR ASSOCIATION

STATEMENT OF

J. MICHAEL McWILLIAMS

representing the

AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am J. Michael McWilliams, an attorney in private practice in Baltimore, Maryland, and the Chairman of the American Bar Association's House of Delegates, the Association's 440-member policy-making body. I am here today at the request of our President, Eugene C. Thomas, who is out of the country and regrets he cannot be with you. I also have a great personal interest in this area. I helped start the Maryland Judicare program many years ago under the aegis of the OEO legal services program, served as chairman of the Maryland State Bar committee on legal services for the poor, and recently completed service as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants, which serves as the focal point for the Association's activity respect to the Legal Services Corporation.

I appear today to express the ABA's strong support for increased funding for the Legal Services Corporation. We recommend to you a figure of $360 million for FY88. We appreciate the enormous budget restraints under which you are operating and the very difficult choices which you will be facing again this year as you attempt to allocate limited funds in the most effective manner. We also appreciate the financial support you have provided to the Legal Services Corporation in recent years.

However, we believe the time has come to begin to restore to this vital program the funding which, through budget cuts and the erosionary impact of inflation, it has lost over the past six years.

Thanks largely to private sector contributions, particularly in the form of pro bono legal services and Interest on Lawyer Trust Account funds, some of the negative impact has been softened. But there have been severe cutbacks in service at the local level, creating a situation that needs prompt remedial action. The Legal Services program deserves and requires strengthening through significantly increased federal funding if it is to fulfill its important mission. Nonetheless, in view of budget limitations facing the entire federal government, we now propose a realistic and sensible funding mark, albeit one which would yield only a modest increase in real dollars for the Corporation and its programs.

The raison d'etre of the Corporation is, of course, to secure the promise of equal justice under law to those in our society who are most disadvantaged. 1987 marks the Bicentennial of our great Constitution -- a charter which we proudly hold up to the rest of the world as the symbol and embodiment of the freedom and liberty we enjoy in this country. But freedom, liberty and justice for all are not self-executing propositions; and "We the People" is a hollow phrase if it applies only to those financially able to pay for the blessings of liberty. Despite our best efforts, this is unfortunately the state of affairs facing most of the Nation's poor today.

It is interesting to note that the Founding Fathers, in drafting the Preamble to the Constitution, listed the establishment of justice as the first specific, enumerated function of the new Union being formed:

> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The effective functioning of justice in this country requires that each person have a full opportunity to enforce his or her rights under our laws. That opportunity is largely meaningless if a person having a legal problem cannot receive competent advice and assistance from legal counsel. For those who have no income beyond that necessary for subsistence, adequate legal counsel must be supplied. The bar in this country has long sought to meet the legal needs of the poor. Attorneys have been donating legal services to the poor throughout our nation's history, and the first formalized "pro bono" legal services program was begun in New York City in 1878.

By the mid-1960's, both the bar and the public recognized that the dispensing of justice in this country could not be dependent upon the voluntary, contributed services of the private bar. Justice Lewis F. Powell, Jr., then President of the ABA, carried the bar's message to Congress in 1965 -- the private bar will continue to do all it can to provide legal representation to the nation's poor; but the provision of such representation is a shared public obligation, not solely an obligation of one profession. It should be supported by substantial public funding. And so the federal legal services program was begun. Throughout the last two decades, the private bar has continued to donate an enormous amount of free legal services to the poor.

In the last year, over 93,000 attorneys in this country have donated their time to the representation of indigent clients through formal pro bono projects. There are countless other private lawyers who are also providing such representation on an individual basis. In the state of Florida, for example, a survey showed that Florida's private practitioners provided 699,000 hours of free legal services in 1986, conservatively valued at $35 million. This is only one state; but it represents what is going on all across the country. This is a record which no other profession or trade in this country comes close to matching. But the job is enormous, and cannot be handled by donated services alone.

There are approximately 30 million poor people in this country. American Bar Foundation research and general experience leads us to conclude that 20% of those -- 6 million individuals -- have civil legal problems requiring the assistance of a lawyer in a typical year. According to the most recent statistics made available by the Legal Services Corporation, its grantees, using both staff attorneys and pro bono services, can handle only about 1.3 million matters each year. Thus, at best, our society is handling only a small fraction of the legal needs of the poor.

Several years ago, Congress decided that an appropriate goal for public funding is two attorneys for every 10,000 poor persons in the country. In addition to the attorneys' salaries this includes such costs as office space, a law library, and the salaries for paralegals and secretarial support staff. Congress aptly described this as a "minimum access" goal. It aimed, not at meeting all legal needs of the poor, or even approaching the attorney-client ratio in the general population, but rather at representing a minimum commitment by society that the most essential legal needs of the poor would be satisfied.

For one brief moment, in 1981, that goal was virtually attained through an appropriation of $321 million to the Corporation. The following year, the program, along with many others affecting the poor, was slashed by 25%. Since then, some increases have been provided, but the Corporation's funding level has never returned to the FY81 level. Adjusting for inflation, that "minimum access" funding level would require an appropriation of approximately $500 million today.

We appreciate the stringent federal budget situation and the fact that, regardless of the merits, an increase of this magnitude is not possible this year. We hope that Congress will not lose sight of the goal of restoring such a level of funding over the next several years, however. Accordingly, today we suggest an appropriation of $360 million. That represents the $305.5 million appropriation level at which the program has been frozen for the last three years, adjusted by inflation for those three years, bringing the funding level to $351 million, and we recommend an additional $9 million to begin to restore the program to its FY81 level. The $9 million is admittedly minimal; but it has important symbolic value as an expression of our commitment to the future of legal services to the poor.

Let me turn now to a few specific concerns about how the Corporation's appropriation may be allocated. First, we think the highest priority should be given to the funding of the local programs which actually deliver legal services to the poor. The Corporation's Board has requested no increase in funding for the coming year; but further it has proposed diverting some of these "delivery" funds to the administrative budget of the Corporation's home office. We believe this is going precisely in the wrong direction. Even if no such diversion was recommended, and the current allocations to field programs were maintained, the field programs would experience a decline in their resources, due to inflation -- estimated by the Congressional Budget Office at 4.7%. The proposed diversion would greatly aggravate this problem. The program is aimed at providing legal services to the poor, and that should be the top priority in the allocation of funds. Any increase in funding for the coming year should be targeted at delivery of services, not administrative overhead.

This is particularly critical at this time. We as a nation are on the brink of a challenging year ahead as we attempt to absorb several million undocumented aliens into our society as full-fledged citizens. The process of legalizing these millions of people will require the assistance of thousands of lay counselors and lawyers. Prohibitions on the representation of aliens by Corporation grantees will prevent legal services programs in most cases from assisting in the legalization process, at least in the initial stages. The private sector resources -- pro bono contributions of lawyer time, IOLTA funds, and the like -- will be needed to assist in this area, diverting these resources from the traditional areas in which they have assisted legal services offices in providing representation. These additional needs and demands on resources will further strain the already inadequate system of public and private legal assistance available to the poor, further underscoring the need to provide as much federal financial assistance to the field programs as possible.

The national and state support centers are additional resources which have proven extraordinarily effective and efficient components of the legal services delivery system. The support centers provide on a state and national basis accumulated knowledge and expertise in particular areas of poverty law which local programs simply could not replicate. The Corporation's Board has been discussing eliminating direct funding to these support centers, allocating their funding among the field programs, and permitting the field programs to buy services from the defunded support centers. It is very telling that representatives of the field programs, which arguably would benefit from the reallocation of funds, have uniformly opposed this proposal. They point out that they are very pleased with the service they are getting from the support centers, that they could not meet their clients' legal needs as effectively or efficiently if the support centers were not available to them, and that dismantling each support centers and then expecting the over 300 local programs to put them back together again would be wasteful folly.

I would also point out that in the private sector there is currently a strong trend toward utilization of specialized resource centers. Corporate counsel offices increasingly look to private law firms and other large, sophisticated suppliers of legal services for assistance in particular, specialized areas of the law, and in turn provide research and support to outside counsel. Thus, the trend in the private sector is precisely opposite what the Corporation's

Board appears to be suggesting. We urge you to maintain direct funding for these vital legal resource centers.

There have also been a variety of proposals to use Corporation funds to fund clinical legal education programs in the nation's law schools. Our Association strongly supports clinical legal education and has worked hard to foster its growth. Clinical legal education serves a useful, indeed vital, role in preparing future lawyers to meet the legal needs of their clients. We are not convinced, however, that the use of the limited resources of the Legal Services Corporation to fund clinical programs in law schools is a sound and cost-effective way of meeting the legal needs of the poor at this time. Until the Corporation can demon- strate conclusively that, dollar for dollar, funds spent on law school clinics deliver as high quality legal services for the same money as do traditional legal services offices, funding for such activities should be limited to the relatively small experimental program now in place. It should be noted in this regard that a great many law schools are not located in geographic areas where concentrated poverty exists, which makes it all the more difficult to utilize law school clinics as a cost-effective delivery technique.

In conclusion, the American Bar Association believes the Legal Services Corporation is operating a cost effective, high quality system for partially satisfying the legal needs of the poor. It is a system which effectively involves and utilizes a wide range of private resources. However, the needs in this area are enormous and require substantially increased public support. We urge that the Corporation be appropriated $360 million for FY88.

STATEMENT OF WILLIAM WHITEHURST, PRESIDENT, STATE BAR OF TEXAS

Senator HOLLINGS. Very good. We appreciate it. Mr. Whitehurst?

Mr. WHITEHURST. Senator, first let me say, we met, I think, last when you were in Texas. I bring personal regards from my colleague Mac Kidd, a Texas trial lawyer.

Senator HOLLINGS. Is he doing all right?

Mr. WHITEHURST. He is doing fine. As I mentioned out there, we would love to have you come back and visit sometimes.

Senator HOLLINGS. I would enjoy it very much.

Mr. WHITEHURST. I am here today as president of the 48,000-member State Bar of Texas.

Senator HOLLINGS. Your home is in?

Mr. WHITEHURST. Austin.

Senator HOLLINGS. That is what I thought, Austin.

Mr. WHITEHURST. I am here also as cofounder of an organization called Bar Leaders for the Preservation of Legal Services to the Poor. I am here in support of the project advisors group budget request of $391 million, and I am also here, though, Senator, to request that the Congress maintain strict controls.

A little over a year ago, I had occasion to visit a Legal Services Corporation meeting. I was there strictly as an ambassador from the State bar from Texas to welcome them to our State. What I saw there concerned me significantly. It was a true debacle; it was an exchange of hostility, an attitude that concerned me personally and it certainly concerned me as president of a State bar.

Later, I looked at the midwinter meeting of the ABA and found that other State bar presidents across the United States had had similar experiences. Because of that, and because of our concern for what was happening internally with the Legal Services Corporation, we formed the Bar Leaders for the Preservation of Legal Services for the Poor, which now has over 30 States involved, including your State.

What we are concerned about is the attitude, the apparent attempt to destroy from within what they have been unable to destroy from without, thanks to the Congress, with regards to funding for Legal Services to the poor and administration of that group.

Last year, I had occasion to testify in front of your like committee over in the House, and I simply expressed some concerns but attributed it largely to what I thought was a young staff, inexperienced board. But I came here today, and I traveled from Texas specifically for my 3 minutes to tell you that it has not changed; that there are clear danger signals; that the leadership of the legal communities in this United States is gravely concerned about what is happening within the Legal Services Corporation.

Senator HOLLINGS. Elaborate on that. What do you mean when you call it a debacle and they are trying to destroy it from within? In what way?

Mr. WHITEHURST. Let me start by reminding you of the testimony of Clark Durant, who is the chairman, Presidentially appointed, approved by the Senate, who spoke——

Senator HOLLINGS. Down in New Orleans.

Mr. WHITEHURST. He spoke in New Orleans.

Senator HOLLINGS. On paralegals.

Mr. WHITEHURST. He said: One, "Let's do away with Legal Services Corporation," the thing that he chairs and is the guardian for and is responsible for; and two, "Let's deregulate the legal community and turn this over to entrepreneurs who can get hickory nuts and turnip greens for fees," literally. That is what he said.

That is an embarrassment. It raises concern, but I will tell you it simply confirms the concern that the legal community has had now for sometime.

Senator HOLLINGS. I find that in the Washington leadership, but do you find that out in the local offices?

Mr. WHITEHURST. Not in the local field group at all, no. No. Our field programs are outstanding in Texas.

Senator HOLLINGS. You said you knew of one which was a debacle.

Mr. WHITEHURST. What I visited was a Legal Services Corporation Board meeting.

Senator HOLLINGS. Oh, a board meeting.

Mr. WHITEHURST. A board meeting.

Senator HOLLINGS. Did they have a board around there? They didn't have a board for a long time.

Mr. WHITEHURST. They had a board meeting. They had a board meeting in El Paso, TX, and I attended that. The way I see it in Texas, the witch hunt that is going on now in the guise of monitoring where they are sending people out to our States to go through our field programs, which I tell you are operating in top fashion in the State of Texas, and they send people to do that, and I brought a couple of resumes.

Just let me show you who they are sending out here. This is a resume of one gentleman who is a monitor for the Legal Services Corporation whose resume starts off that he has extensive Federal law enforcement experience in the conduct and management of criminal financial fraud investigations. He served as a special agent, as a criminal investigator where he conducted financial fraud investigations and made recommendations regarding prosecutions of individuals for violations of Federal tax laws.

This same man served currently, well, served as of 1981, he was assigned to the United States National Central Bureau of Interpol at the Department of Justice, Washington, DC, where he assisted Federal, State, and local law enforcement agencies in obtaining information of a criminal nature from other member countries of Interpol. He has been involved in organized crime, political corruption, and other criminal investigations.

Another example of the people they sent out to Texas to look at our programs, which I submit to you are working fine, is this man, on his resume says one of his personal attributes is investigations, including organized crime, Fortune 500 companies, illegal tax shelters and tax protestors and narcotics utilizing covert as well as overt operations.

He talks about being an undercover agent where he posed as a dishonest special agent and served as a criminal investigator, chief of criminal investigations division, where he developed a new organized crime narcotics program, and in 1984 to 1986, served on the President's Commission on Organized Crime where he was a leading investigator on all financial investigations including the infiltration and theft of employers and union health and welfare funds by the la Cosa Nostra.

These are the types of people that they are sending in under the guise of monitoring, which is to be: One, to make sure the programs are complying, but also to be of assistance to these programs; to make sure they are functioning properly.

What we also see are the attacks on the national and State support centers. Anyone who has looked into this knows that the very glue that holds our Legal Services programs together are the State and national support centers. If you wanted to systematically destroy the Legal Services Corporation from within, what you would do first is you would do away with the national and State support centers, and that is exactly what they have proposed to do.

They voted without any input from the field programs to defund those groups. Thanks to Congress' help, they put it back in, but they have asked in their last budget to zero fund it.

It is these things that lead us to believe that the Legal Services Corporation Act is not being administered properly. It is not being administered with the congressional intent that you put into the bill, and the people who are serving on it are not there serving in good faith as, obviously, we see in Clark Durant's statements.

We ask you to not only raise the appropriations, disregard their request that the budget be frozen, which they have requested for three years, and to tell you that they have lost all credibility in the legal community, and that you control those expenditures in great detail.

Senator HOLLINGS. I see you are leading in a lot of things out there in the bar. What about the enforcement of law and apprehension? I am thinking of the *Jeter* case and several others that happen to be happening in Texas.

Mr. WHITEHURST. That is of great concern to me and one that we are looking into very closely. I am very concerned about the conduct of the prosecutors in some of our prosecutions.

Senator HOLLINGS. You are on every Sunday night on "60 Minutes," just about.

Mr. WHITEHURST. Is that right? We have the largest number of people on death row in our State in the United States, and a lot of those people don't have representation. So we have a real concern in that area.

Senator HOLLINGS. You are getting into that?

Mr. WHITEHURST. We are getting into that very forcefully.

Senator HOLLINGS. They need a fellow like you to head it up. That is an embarrassment.

Mr. WHITEHURST. It is an embarrassment.

Senator HOLLINGS. A lot of those cases and everything else. I have just never seen them handled that way before anywhere.

Mr. WHITEHURST. Texas justice has a wide-ranging reputation, Senator, and we are still coming into the 20th century in some areas.

Senator HOLLINGS. Just like old Ed Zorinsky, our former Senator from Nebraska said, he thought gun control was a steady aim. [Laughter.]

Mr. WHITEHURST. We need to turn up and enforce the Miranda warnings. We still need them in Texas.

Senator HOLLINGS. Thank you.

[The prepared statement of William Whitehurst follows:]

PREPARED TESTIMONY OF BILL WHITEHURST

President, State Bar of Texas

and

Co-Founder, Bar Leaders for the Preservation
of Legal Services for the Poor

On Funding For The

LEGAL SERVICES CORPORATION

Mr. Chairman, thank you for the opportunity to be here today.

My name is Bill Whitehurst. I am President of the 48,000 member State Bar of Texas. I am also co-founder of an entity known as "Bar Leaders for the Preservation of Legal Services for the Poor" — a growing ad hoc group which represents bar associations and bar leaders nationwide who are concerned about the survival of legal services for the poor as rendered through adequately funded, competently staffed field programs. Included in the materials I have submitted to you is a listing of the bar associations, representing over 30 states, which are at the forefront of this legal services preservation effort.

I come here today to support the Project Advisory Group's reasoned and moderate request for a 391 million dollar appropriation for the Legal Services Corporation in 1988, and I come here to urge you to maintain strict control over how those funds are spent.

"Bar Leaders for the Preservation of Legal Services for the Poor" was originally founded over a year ago by bar presidents from Massachusetts, New Hampshire and Texas. Our in-depth exposure to the actions and attitudes of the Legal Services Corporation began in 1985 when the Corporation Board of Directors held meetings in our regions. Our observations of and experiences with this Board led us to fear for the future of legal services. They led us to fear that the LSC Board and staff were making a mockery of our nation's commitment to equal access to justice for the poor as articulated in the original Legal Services Corporation Act.

We have continued to follow the actions of this Board since 1985. What we have seen is Board member hostility and antagonism toward the very programs and services the agency funds. We have seen hostility toward legal services personnel and toward bar leaders who have come forward to support legal services. We have seen individual field programs, support centers and special services, such as those for migrants, under seige. Our observations and fears compelled us to organize and to turn to Congress directly to convey the depth of our concerns.

A year ago, I appeared before your Committee's counterpart in the House — the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies -- to express the fears of bar leaders everywhere that the Legal Services Corporation was being "gutted from within." I spoke of a seemingly hostile Board and a young or inexperienced staff. And I spoke of a Board which had no regard for the language of your Appropriations Conference Reports. Now -- a year later -- I can no longer come before you and attribute LSC's actions to inexperience. Nor can I be charitable in talking about the Board or staff's "seeming" hostility. That hostility is real. It is also now a year older, a year more sophisticated — and it has taken its toll for yet another year on those in the trenches who are trying under tremendous odds to ensure that the poor among us have even a small measure of access to our courts and to our system of justice.

With the level of support this Committee has shown for legal services and with the level of support conveyed by bar associations and leaders throughout the country, one would hope that we could report progress at the Corporation headquarters or enlightenment in LSC leadership or fiduciary attitudes. But I regret to say, Mr. Chairman, that I have traveled all the way from Austin, Texas to report to you that nothing has changed. Therefore, this Committee must be more vigilant than ever before in ensuring that our legal services programs are adequately funded and that they are administrered from Washington without hostility and harassment.

I regret to report that the sad reality is that the current LSC Board is still engaged in a witchhunt in the guise of monitoring. I know this all too well from speaking with colleagues in North Carolina and wherever there are strong migrant programs or support centers. I also know this by experiencing first hand the Corporation's appalling initial confrontations with and clearly excessive and harassing information demands on the Legal Aid Society of Central Texas and on the Texas Legal Services Center during the very recent monitoring of these two programs.

Bar leaders now recognize that monitoring teams no longer wear the characteristic LSC hostility on their sleeves. In fact, monitoring visits in general were more polite and less confrontative in 1986 than in 1985. But the outward appearance hides the truth. From east coast to west, north to south, hostility and innuendo emerge loud and clear in writing when monitoring reports are finally produced -- often to the great surprise of the programs monitored. There must be no mistake about this. The hostile, ideological orientation of the Corporation's monitoring unit remains intact. After repeated requests from Congress, field programs and bar leaders the Corporation has yet to produce a set of monitoring guidelines to insure fair and equal monitoring procedures.

The sad reality is that the LSC Board and staff are still lurching around looking for an excuse to defund the support center system when all of the evidence from the legal services field programs and the private bar has told LSC vehemently that the support centers are essential to the quality delivery of legal services to the poor.

I will not re-debate the support center issue here today because I have included my recent remarks to the LSC Board on this subject as an addenda to my testimony. But I will share what I have observed about LSC's motivations and decision-making. The LSC Board -- without notice to the field or the private bar -- voted 6-4 on June 28, 1986 to eliminate LSC funding for state and national support centers and the legal services Clearinghouse. Legal services attorneys were shocked. The private bar was outraged -- and you ultimately stopped the LSC Board from following through on this transparently hostile and destructive action.

The Corporation's response was to undertake "a study" of the issue. And I have watched that so-called study emerge. I have testified and heard dozens and dozens of legal services leaders, workers, the poor and bar association officials testify that support centers are the glue that holds our legal services delivery system together as a system which can engage in high quality, often complex, poverty law advocacy. And yet, the Corporation's draft 1988 budget again called for zero funding for the support centers. The Board had second thoughts after realizing that their blatant disregard for your directives or desires would simply not be tolerated. So by budget asterisk, they quietly signaled that they had no commitment whatsoever to this line item. LSC appears simply to be waiting for the furor to die down or for Congress and the Bar to turn our backs so that they can finally ignore the entire written record on this subject and can permanently gut the support center system.

I emphasize this scenario because it truly is larger than the LSC Board's support center debate itself. While it is just one component of the overall anti-legal services sentiment within the Legal Service Corporation today, it provides us a glimpse into the attitudes and motivations of the LSC leadership. There should be NO mistake about what is happening here. If one wanted to systematically destroy effective, high quality legal representation for the poor in this country, one would first dismantle the national and state support centers.

I have listened to and watched LSC closely on this subject. And I have come away thinking that LSC's study and hearings on support centers are like being told "you are going to be shot at sunrise, and now we're going to give you your trial." Congress must stand firm and not let this execution take place.

The sad reality is that the majority of the Legal Services Corporation Board has long ago abrogated its fiduciary duty as a group sworn to carry out the purposes of the Legal Services Corporation Act -- an Act premised on the "need to provide equal access to the system of justice in our Nation for the poor who seek redress of grievances."

One Board member is well know for her diatribes against legal services, for her vehement advocacy of funding cuts for LSC, and for her rude treatment of field program representatives and bar leaders alike when they appear before the LSC Board. Another Board member has consistently led the charge for disregarding Congressional intent and House/Senate Conference Report language on the LSC appropriation. Unless Congress forces me to do or not to do something by statute, he says, their intent means "zilch" to me. And, in impassioned tones he has urged growers to come before you directly to attack the funding and the work of migrant legal services programs -- programs which serve and protect the most vulnerable among us. And the Board as a whole is on record as being against funding for support centers, against funding for a legal services Clearinghouse, and as being for an overall funding freeze and for a 5 million dollar cut to the field programs which are in the trenches delivering direct legal services to the nation's neediest.

And then there is the spectacle of LSC Board Chairman W. Clark Durant, III who, as you must know by now, has appeared before the American Bar Association and has taken to the nation's airwaves with a wide grin to call for the "replacement" of trained, licensed, competent legal services staff attorneys with untrained, unlicensed, unregulated entrepreneurs who will rise up in the marketplace to handle all the legal needs of the poor -- for a fee, of course! But Mr. Durant is also a man of great faith, for he believes that among such entrepreneurs will be those who will, in fact, accept hickory nuts or turnip greens in lieu of their normal cash fee.

This would be silly if it were not so scary -- if this man were not the head of a presidentially-appointed, Senate-confirmed Board of Directors sworn to uphold the Legal Services Corporation Act. These remarks so outraged the organized bar that bar leaders of all political persuasions and from all geographic regions, including the founders of "Bar Leaders for the Preservation of Legal Services for the Poor," called for Mr. Durant's immediate resignation as LSC Board Chairman and member. We also challenged the entire LSC Board to disavow the Chairman's outrageous remarks or to resign along with him.

The subsequent scene of the LSC Board's March 21st debate on such a disavowal was an incredible one. The motion was simple -- "to go on record that the LSC Board does not support the abolishment or replacement of the Legal Services Corporation." Board member LeaAnne Bernstein abstained. Her emotional accusation was that the motion was "not properly worded, and it's too ambiguous in its intention and meaning for a proper vote to be cast either way."

Board member Claude Swafford said she distrusted the "manner and the method" of the motion and claimed it was made by Board member Thomas Smegal in "a desire to trick the Board." In voting, Mrs. Swafford said on the record,

> I vote yes with reservation because it would be inconsistent of me to have testified before Congress under oath to do otherwise, and I certainly am not going to go on record as doing negative to what Tom suggests.
>
> Tom, I'll just have to tell you that I know that

> you've got an ulterior reason and I know if I were to vote otherwise you'd use it in some method to harass me and intimidate me. I just am going to go ahead and vote yes, but I certainly hate to.

Board Chairman Robert Valois followed by saying, "Let me just adopt Claude's comments and vote aye." As an addendum to my remarks here, I have also included a speech given by a dissident LSC Board member, Paul Eaglin, before a group of southern project directors. If my testimony alone does not convey to you that this Board must be stopped, certainly Mr. Eaglin's eloquent statement should adequately convey what a frightening reality the LSC Board has become.

This Board has become an embarrassment to the Senate which confirmed it, and it is an increasing threat to justice as we know it. In the Appropriations process they must be carefully and firmly and statutorily controlled. Ultimately the entire hostile majority MUST be replaced. If you do not insist on their ouster, you are truly leaving the fox in charge of the chicken coop.

The final sad reality is that this Board, since it was first seated in December of 1984, has refused to request a funding increase for the Legal Services Corporation. They have refused even to request what their predecessors had sought for a budget mark for FY 1985. They have refused even to request a return to the funding level the Corporation had in 1981. In December 1984, they requested a 305 million dollar appropriation for Fiscal Year 1986 -- which represented a freeze at the 1985 funding level -- because they claimed they did not have enough information to justify any different request. The next year the Board recommended freeze funding again. This time ignorance was not even used as a ploy. The vote was clearly an antagonistic and hostile one. And now, for a third year, this Board is saying, "still freeze the LSC appropriation." And they ask not only that the total be frozen but that the legal services field programs actually take a 5 million dollar cut so that the line item for Corporation headquarters management and administration can be increased substantially.

But the credibility of this Board should be nil with you by now, and a controversial LSC Board recommendation for freeze funding again -- for a third year in a row -- is simply not worthy of your serious attention.

Therefore, I urge you, on behalf of the State Bar of Texas and on behalf of bar leaders nationwide, to consider carefully the thorough and professional fiscal analyses and legal needs assessments of the well-respected Project Advisory Group.

I urge you to adopt the Project Advisory Group's budget mark and to endorse an appropriation of 391 million dollars for the Legal Services Corporation in fiscal year 1988 as just one step in reaching toward the provision of minimum access to justice for the nation's poor.

And, finally, I urge you put the most stringent controls possible on the funds you do apporpriate so you can ensure they are being used to serve the poor efficiently, effectively and competently through field programs and related programs and services. The record compels us to conclude that this Board and its staff cannot and should not be trusted with discretion.

The Corporation, as it is now run, demands your continued vigilant oversight until we can move beyond the current hostile, destructive atmosphere. At the same time, the poor deserve the firm commitment to justice which a 391 million dollar appropriation represents. In this Bicentennial year, and in any year in which "justice" is a watchword of your work, you should do no less.

Thank you for taking the lead with us in the cause of equal access to justice.

Testimony Of

BILL WHITEHURST

On Continued Direct Funding For The
National and State Support Centers

March 7, 1987
New Orleans, Louisiana

I appear today on behalf of the State Bar of Texas and also on behalf of the national organization "Bar Leaders for the Preservation of Legal Services for the Poor" which is made up of 31 state bars and numerous local bars.

I have testified in front of the LSC Board before and although the results have not been immediately apparent, I remain optimistic that you have at heart the basic mandate of the Legal Servces Corporation Act, which is nothing less than the delivery of legal services to the poor in an effective and efficient manner.

As always, I enjoy watching the proceedings before I testify. I had the opportunity to do that in El Paso and it was no less interesting this morning as I watched the different groups come up before you and give their best in telling you what they do and how they use state and national support. But I can't help thinking that this is like being told you're going to be shot at sunrise and now we're going to give you your trial. And I worry about that.

The topic you are discussing today is one about which we feel very strongly. Let me first say that the State Bar of Texas, which has 48,000 members, has gone on record by Board resolution supporting our legal services state and national support programs.

It is our belief that state and national support is and must continue to be an integral part of the delivery of legal services to the poor. If such centers did not exist, we would be here today urging this Board to invent them. I say this because it is through continuing legal education and interaction with other professionals that we, individually and collectively, enhance not only our professional development but the profession as a whole. And more importantly, we thereby better and more effectively serve our clients.

We all know that law, like medicine, has become increasingly complex. More and more reliance is placed on specialists in all disciplines. The field of poverty law is no different. All competent practitioners recognize the need for access to experts. The national support centers provide this expertise to legal services attorneys and their clients in an efficient and cost effective way.

When I last testified before you in December of 1985 you were considering a budget that had zero funding allocated for state and national support and for the Clearinghouse. I expressed my concern then, as I do now, about doing away with these programs and about the important role state support plays in Texas. In a state as large and diverse as Texas, with 11 different field programs, state support prevents them from each continually reinventing the wheel. It further provides the specialized training in poverty law issues needed by legal services practitioners to comply with the State Bar mandatory continuing legal education requirements.

My statement today to you is not a new one, and it is not one that our State Bar has prepared simply for this proceeding. Back in 1982, Chrys Dougherty, our President then, spoke to the National Organization of State Support Units (NOSSU). He asked at that time for their help in getting our pro bono attorneys up to speed in areas of poverty law where we would normally have limited experience. State support programs answered that request with new manuals, litigation guides, training, access to brief banks, and through co-counseling in new and complex cases. Even before LSC imposed the transfer in resources to private attorney involvement activities, they consulted with us and voluntarily developed materials and programs so we would work together in serving the growing number of America's poor.

It has been through those joint efforts that we, the organized Bar, have learned of the vast resources provided by state and national support programs. Certainly if district attorneys, county attorneys, insurance lawyers and trial lawyers can network and access publications in clearinghouses, why should lawyers representing the poor, often in remote offices, not have access to similar support services.

It is my impression, that if you wanted to systematically dismantle the Legal Services Corporation, as Chairman Durant seems to have suggested at the ABA midwinter meeting, you would first take away the national support centers and the Clearinghouse, which is exactly what is proposed by the Board in previous years budgets. Only Congressional intercession has prevented the LSC Board from directly defunding state and national support.

In August of 1982, Mr. Dougherty also made the following comments to the NOSSU conference:

> State support staff know better than any group how to train lawyers, paralegals and staff to embrace quality representation for the poor, how to keep track of emerging legal problems in the community and how to determine which of these are most critical and which require legislative as well as temporary judicial solutions, how to link clients to community education and self efficacy materials, how to present the problems of poor people and poverty law issues to administrative and legislative bodies, and how to coordinate and work with LSC field offices, regional and national support centers and the pro bono efforts of the private Bar.
>
> Additionally, some of you know how to conduct complex litigation on poverty law issues, how to locate expert witnesses, and how to perform all the discovery and trial paths that such litigation involves. All of you know how to conduct litigation on a shoestring.

Those words are as true today, if not more so, as they were in 1982. I wish to reconfirm and reassert this deserved praise.

As I understand it, the LSC Board voted last year to terminate the funding of 17 national support centers, 66 state support units and the Clearinghouse and is currently considering turning these funds over to field programs with no requirement that they be used for support services -- a concept called privatization. This comes at a time when LSC directs that status quo funding or actual reductions take place in basic field funding.

I believe that this action would be the death knell for many if not most support centers. I say this not because any of the centers lack merit or are performing inadequately. In fact, I know that the most recent LSC survey conducted in 1983 indicated a high degree of field satisfaction with services provided by state and national support centers. Indeed, I am reminded that at the end of 1981, LSC's top managers sent a memo to regional offices and field programs stating that, "we believe that state support is an essential function that must remain as a key component of any system of delivering legal services to the poor." Rather, I say this is because the system you propose for funding them is simply unworkable.

I have some personal experience with LSC approval of subgrants in Texas. While I will not belabor the point, it is that experience that leads me to the conclusion that we cannot rely on the Corporation's ability to expedite approval of subgrants if we expect to preserve even a remnant of the existing state and national support system.

Even if LSC were capable of expediting the process, it would require approval of something in the magnitude of 5,457 separate subgrants to continue the current national support network. An additional 321 contracts would be necessary to maintain existing state support units. The logistics of negotiating such a large volume of contracts and getting the necessary approvals is overwhelming, not to mention the incredible and costly waste of time and effort on the part of field programs, support centers and LSC staff that would be involved in such an undertaking.

LSC's track record on subgrant approvals is not good, and, in my opinion, the process has and will be abused. One LSC Board member, Thomas Smegal, has expressed this same concern with regard to LSC monitoring procedures. In a letter to Chairman Clark Durant, dated November 4th, 1986, Mr. Smegal said

> As we are all aware, that process continues to be the subject of substantial inquiries from concerned members of Congress.
>
> It is my understanding that the Legal Services of North Carolina have been subjected to over 400 person-days of monitoring. I can appreciate that that program, with several other offices in addition to its main offices in Raleigh, may require a somewhat more extended monitoring visit. However, it is incomprehensible that monitoring any of our LSC field programs in accordance with the Legal Services Corporation Act and regulations would require such an incredible expenditure of Corporation resources.

Mr. Smegal concluded in his letter that

> without further information being provided to Board members, I can only conclude that there is a witch hunt being conducted in North Carolina as part of a hidden agenda of which I am not aware. I assume it is only coincidental that this particular excessive and abusive monitoring activity is occurring in a state with a Senator who has been critical of the Corporation.

Witch hunts are what we are seeing in Texas in both LSC's monitoring activities and subgrant approvals. I am concerned that we will see an increase in such activity as it relates to state support programs given LSC's attitude and state of desire to do away with them. We know too well that what the Board and staff have been unable to achieve through Congress, they will attempt through the back door. As I said earlier, if you wanted to systematically destroy legal services programs in this country, the first thing that you would do would be to dismantle the state support centers and the national support centers. They are the continuity. They are the glue that helps hold it together and makes it work and I think you know that.

The measure of a strong and viable legal profession is the degree to which we, as professionals, pursue our obligations to the larger community. This includes assuring that all persons are guaranteed equal access to our system of justice. It includes the individual lawyer's responsibility to participate in pro bono publico activities. And it includes the lawyer's professional obligation to constantly strive to improve both the legal profession and his or her own professional abilities.

We accomplish this latter goal through communicating with our colleagues about issues of mutual concern. We accomplish it, in the context of delivering legal services to the poorest among us, through a strong network of state support centers providing litigation support, local training and program coordination. And on a national level we accomplish it through a strong, federally funded system of national support centers in areas of substantive legal specialization.

You know, when I was preparing for this testimony, I wanted to approach it as a businessman and not just as any businessman, but as a lawyer businessman because I would assume that is what a Board of stature and in this position would do. But then I was reminded that the end result was unilaterally stated and introduced last year. And, I looked for studies and I looked for analysis and I tried to do my homework, but I tell you, I couldn't find any that would have supported the actions or the attitudes of this Board. Indeed, everything I saw was to the contrary. I understand and appreciate the concept of a free market approach, but I think in any kind of economic approach you need to look at the type of business your're regulating or introducing or administering.

I worry about the creation under your system of an incredible, bureaucratic nightmare -- one which we do not need because we have so many other existing problems and matters that need your desperate attention.

In conclusion, I concur with the July 11th, 1986 resolution of the Project Advisory Group's Steering Committee, and that is that the Board's decision to terminate direct funding for national and state support and the Clearinghouse is without any basis in reason or fact and can only be seen as intended to dismantle the entire legal services support system. Furthermore, as PAG states, to do so would undermine and harm the actual representation of clients and impair the ability of legal services lawyers to meet their ethical obligations to their clients.

I urge you not only to reconsider but to reject that decision and to continue the existing system of legal services support. To do otherwise would be contrary to the mandate of the LSC Act.

Finally, let me add that I have for some time been very concerned about the Legal Services Corporation Board. I am concerned because I think what's happening, that the things that I observe, affect all programs. It affects the very basis of what we are trying to accomplish in the legal services program. So, for that reason, if no other, I am concerned about the health of this Board and its credibility and I believe that there is a significant credibility problem. My concern is not so much that it may be fact but that it is perceived, if not a fact.

We have had a bad year for legal services in my opinion. We have seen the situation with President Wentzel. We have seen the reaction and problems that have resulted from Clark Durant's speech which literally confirmed every concern, every criticism voiced about the Legal Services Corporation Board of Directors in the last 12 months.

I have seen and you have seen LeaAnne Bernstein's outrageous conduct, comments and theories which, when promulgated, have embarrassed even you. We have seen the appointment of a Board by a President who does not support the legal services program and a Chairman of the Board who has confirmed and agrees with the President's viewpoint yet retains his position to administer the Corporation. We have seen a year of widespread monitoring abuses.

We have seen a year where there has been fighting with Congress, where there has been fighting with Bar leaders and there has been fighting with field programs and with national and state support centers, we have seen a year where we now have the President of the ABA calling for your Chairman's resignation, and the proposal that we are talking about today represents the continuation of that confrontation, of the destructive approach.

My concern, Mr. Chairman, is that even if the proposal is valid, it is being perceived as a method of doing from within what has been unable to be done from without and that is a systematic destruction of the legal services system. And all I'm asking, all I say is, whether you care or not, it looks bad.

We talk about appearances of impropriety in our Code of Ethics, and I will tell you the perception of what is going on in this Board in regards to state and national support centers has an appearance problem, and it is concerning the Bar and the Bar leaders and it is concerning Congress and it is concerning the public. And so, I mention that to you because I think it has to be and should be a real consideration of this Board, especially in light of the year we've had.

Thank you for the opportunity to make these comments.

President's Page

It's Time — A Tribute Long Overdue

Bill Whitehurst

Last September James Kilpatrick and William Buckley complained in their syndicated columns about legal services lawyers — those "happy hot dogs of the liberal left" and "lobby of the left-minded lawyers" who want the general public to "rally around the socialist flag." The *Christian Voice* listed opposition to federal funding for legal services to the poor as its third-highest measure of congressmen's "christianity" — ahead of opposition to busing and abortion or support for school prayer. Well, good lawyers and citizens, as your president I thought I had better look into this in order to protect our profession and the people of Texas from such an evil threat.

I donned armor and a shield and set out a sword in case I had to waste a few of these dangerous critters. However, as I prepared for the battle I happened across some notes I had made while running for this office which brought me back to reality.

During the campaign I visited legal aid offices throughout Texas. I had the opportunity to meet and talk with those lawyers who provide legal services to the indigent full time, who deal with tremendous numbers of people on a daily basis, who are understaffed, who are overworked, who are underpaid and who, in most instances, do not have equipment or systems that even approach those of a modern law office. It disturbed me that the apparent theory of poverty law is that you have to be a lawyer in poverty in order to practice it. The dedication of the lawyers and staffs which I observed was as intense, if not more so, than that in any major firm I visited.

For years I have heard general complaints about legal services lawyers and observed the way our profession has treated them as second-class citizens. When I was appointed to Governor Mark White's Select Committee on the Judiciary I served on the Delivery of Legal Services Subcommittee which held public hearings on these complaints and concerns. We had just completed a legislative session where an Interest on Lawyers Trust Account Program that would have provided more than $6 million a year for legal services to the poor at no cost to the state was defeated — largely because of rhetoric and rumors espoused about legal services attorneys and offices.

A wide range of individuals, including legislators, who voiced these concerns were personally invited and urged to give testimony to document the seriousness of this problem. Although we received enlightening testimony and statistics demonstrating the numbers of poor served and the successes of legal services attorneys in both state and federal courts on their clients' behalf, not one person or group showed up to enumerate their transgressions. A second hearing was scheduled and our efforts to obtain this negative testimony were re-doubled — but to no avail.

I am often asked why lawyers, as a profession, have such a poor public image. My response has always included the fact that history demonstrates we will never be among the most popular due to the nature of our work. We all agree that our image problem is largely due to the lack of public understanding and appreciation for our adversary legal system and the role lawyers play in our society.

I submit the same could be said within our own profession in regards to the legal services attorney. History demonstrates that so many of the criticisms we hear come from a lack of understanding and appreciation for the system which provides legal services to the poor and the role legal services attorneys play within the profession.

The last national statistics gathered, in 1984, show that legal services attorneys handled 358,852 family law cases; 234,179 housing cases; 223,177 public benefits cases; 153,202 consumer cases; and 28,081 health cases. From looking at individual programs we know the numbers have significantly increased in the last two years. The Legal Aid Society of Central Texas alone accepted 4,600 new cases in 1985 and approximately 5,750 new cases in 1986. The most interesting, and perhaps most telling, fact I uncovered is that the State Bar has no record of ever having to take disciplinary action against a legal services attorney in Texas.

The exposure I have had this year to the legal professionals from legal services programs has given me an even deeper appreciation for the difficulties of a poverty law practice and an increased respect for the attorneys and other staff who choose to practice full time representing the poor. There are private lawyers who do not recognize such practitioners as their professional peers. It is this misconception which needs to be changed.

So what if James Kilpatrick and William Buckley — whose combined social conscience level would not register on the Richter Scale — refer to this segment of our profession as "hot dogs." At least they were characterized as *happy* hot dogs. Our legal services programs are positive, they are constructive instead of destructive, and they serve a need we cannot ignore.

To those "happy hot dogs" it is truly time that we say thank you, we are proud of your efforts, we respect your professionalism, and we are pleased to have you as full partners in our State Bar. Indeed, it is a tribute long overdue.

Bill

REVIVING THE FIELD

by Paul B. Eaglin

The following remarks were made by Legal Services Corporation Board member Paul B. Eaglin on March 2, 1987 in Memphis, Tennessee before a gathering of the Southeast Project Directors Association. Mr. Eaglin had been asked by SEPD to address the subject of "reviving the field." These remarks have been made available for distribution by Bar Leaders for the Preservation of Legal Services for the Poor.

It seems ironic that *I* should talk about "reviving the field" before this group of project directors. While I certainly concur that there is need for revival in legal services, my feeling is that *I* am the one in need of revivification.

Too often I've found the experience of LSC Board meetings to be sorely trying to the spirit. To observe the actions of those who would seem to be hastening the demise of a service that a few people despise and millions of persons need can be a downright daunting experience for the soul.

How can *I* talk about reviving the field? Don't you know that I'm on the *losing* end of every vote for money to sustain and insure effective legal services for the poor BY FIELD PROGRAMS WITH PROFESSIONALS ON STAFF to render service?

How can I talk about reviving the field? I'm in need of revival too often after those meetings where representatives who speak *up* for the field are put *down* with rudeness, with malice, with insult. Not only that – when well-respected representatives of professional legal organizations – bar association officials – also appear to give voice to the need for professional staffs engaged full-time exclusively to serving the poor, they too are greeted with antipathy. What a depressing environment!

How can one revive the field in circumstances such as those? Although professionals from the field programs and from the bar organizations that care about staff programs are so often targets of hostility, the forces of evil and malice do not reserve their slings and arrows only for them. Even within the Board itself, behind closed doors, those who would do ill rage on at anyone who is seen as sympathetic to effective legal services provision through staff programs.

I'll never forget the experience of beginning this new year at one of our meetings at which an executive session was held. Don't think that courtesy is a feature of those meetings. It is not. Don't think that proper decorum for meetings is required by the Chair when a Director is determined to attack one who is concerned about the poor. In fact, decorum is severely lacking, as anyone of you may observe at any given meeting. So, at the arrival of the new year, I really should not have been surprised at the attack that was in store for me, and yet I *was* taken aback by it. The experience was diabolical in a sense. To have a maniacal, raging colleague on the Board scream at me the question, "Whom do you represent, the poor people or the lawyers' cartel?" is a staggering event, I'm sure you would agree. It's not that the term "lawyers' cartel" was new to me; it was not. It had been bandied about previously. [However, there is a special meaning for "lawyers' cartel" as applied to the legal services context. That is the notion that the money paid as salaries to professionals in staff offices – lawyers and paralegals – is a diversion of money from the poor. The interest in maintaining staff offices, therefore, is seen as merely an interest in maintaining employment for members of the "lawyers' cartel". In short, to pay for a full-time staff is to disserve the poor, according to this criticism.] I'm sure that all of you are familiar with the term by now as well. Yet the experience confirmed me in *my view* that malice is the motivating spirit of the national leadership of the Corporation. The bar leaders are right in their characterization of the leadership. Jonathan Ross articulates it well, and did so recently with unerring accuracy only to have his criticism confirmed in New Orleans.

Yet the question remains, "How does one meet the challenge of this topic, 'Reviving the Field'?" The national leadership's relationship to staff programs is worse than that of a cruel parent to an unwanted step-child. Public hostility; hostility in private – one board member against the other; budget recommendations that abrogate responsible stewardship; liaison with professional bar groups – respected and caring in its leadership – is a relationship sadly lacking in substance but plagued with insult. How can the field REVIVE in this environment? Indeed, the wonder is that it has SURVIVED!

Despite the environment and the atmosphere of hostility that pervades it, there are sources of strength for the field programs. It is a constant source of strength for me – and for your programs as well – that Congress remains supportive of the concept of and the reality of effective legal services through the various programs of the field. When two votes out of eleven are not enough to establish policy on the Board of Directors, fortunately an alert Congress acts to *require* a budgetary allocation that protects the programs of legal services.

Leaders of *both* political parties in Congress act cooperatively to preserve and to strengthen this program that the President of the ABA recently noted as a force for social stability and societal cohesiveness. In the Senate, two leaders who lent their names to the budget deficit reduction legislation regularly transcend the differences of political party to provide effective national policy leadership for legal services. I suppose that you are like me in your reactions to such leadership. You too are encouraged by strong congressional action in the face of this-or-that board action that flies in the face of congressionally established support for legal services. Believe me, Congress is a vital pillar of support for the poor in need of legal services. Without it, our nation would not have one of its most effective and influential forces for social benefit.

Congressional efforts are only one source of support, and a valuable one. You have more resources at hand, most recently demonstrated by the strong leadership of ABA President Thomas. Moreover, I have been privileged to make the acquaintance of strong bar leaders at the state level – Mr. Whitehurst of Texas, Mr. Greco of Massachusetts and Mr. Ross of New Hampshire – who speak up for the poor and for the continuation of effective staff programs. Their efforts demonstrate the breadth of support for your efforts and your programs. These leaders recognize that staff programs, if adequately funded, provide the figurative cornerstone to our nation's commitment to equal justice for all. Their own experiences as lawyers and as leaders reveal that a society in which the disadvantaged in life are also deprived of valued legal representation will shortly become a society undermined from within by social deterioration.

In the decade of the 60's, America was taught by her prophet, Dr. King, that "riots are the language of the unheard." Mr. Thomas of the ABA knows that; Mr. Whitehurst has not missed the point either, nor has Mr Greco or Mr. Ross. Their vital interest in law leads them to the realization that when courts close the doors of justice to the poor, the poor sooner or later will find devastating means of opening the eyes of society. It is a strength of this nation that at a time like this, such bar leaders as these are given to us to help preserve this acceptance of the rule of law by all elements of society, but especially the poor.

Yet they are not the end of this story. Here I have the pleasant task of praising a fellow board member, namely Tom Smegal. I do so not merely because he is richly deserving of praise. It is also because he epitomizes the bar leadership that has so richly sustained legal services for the poor. He is like a Whitehurst, a Greco, a Ross; one who, throughout his legal career, has engaged in indigent legal services directly in neighborhood legal clinics, indirectly through legal services board membership and through encouragement of bar organizations because he is a recognized, well-respected bar leader. His service extends far beyond his specialty of intellectual property law. The poor who need no copyright find a protective advocate in him. It is always encouraging to realize that leaders such as Tom Smegal, and the bar leaders at the state and national level, choose to sacrifice themselves professionally and personally so that the poor will not go unheard; so that your efforts as dedicated professionals will not go unrewarded. They could so easily entrench themselves in the work of their specialties and their law firms; they could limit their leadership to local charities, clubs, and bar organizations and still gain great respect in their profession. We are so much the better for their efforts on behalf of the poor; for their efforts on behalf of the staff programs.

When we look for pillars of strength and support for legal services, therefore, let's not forget the Whitehursts, the Grecos, the Rosses. Let us not forget the Tom Smegals of our land who, in bar organizations from coast to coast, devote substantial time in their legal careers to the provision of legal services to the indigent. It is a strong influence, a solid pillar, a source to help revive the field.

Ultimately, the greatest reason to spark the revival of the field is that the poor are still there. When I began my service on the board of LSC, I pointed out that the challenge of the poor remains as constant as always. The numbers change; the persons occasionally change and likewise the types of cases -- the legal challenges. Yet the need always is there. The challenge of serving in these times is not an easy one. The call of the poor, crying out from the depths of society, is just as insistent as is the realization of your worst fears about the national leadership to which you must respond. Disappointment at the failure of national leadership cannot be permitted to vanquish your spirit.

For just as the ultimate *reason* for your service remains ever and always the need of the poor for effective legal services, through that need we are led to the last and – in my opinion – the greatest of the pillars of support. Yes, to revive the field is in the final analysis to accept fully and to embrace heartily the righteousness of your service. It is ultimately the expression of society's care for "the least of these" in a biblical or religious sense.

Through *your* efforts, society takes care of its own. Our democracy tries to live up to its ideal of equal justice under law by means of your dedicated response to the poor of your communities. To revive the field is in the final analysis to recognize the fundamental good that exists in bar leaders right here in legal services staff programs, persons who have dedicated their professional careers to this field – Martha Bergmark and Harrison McIver of Mississippi; Thorns Craven, Carol Spruill, Dick Taylor, Terry Roche of North Carolina; Jim Sacher of Louisiana; Bob Clyde and others. These are pillars as well, for they carry on despite the national leadership; despite the malice and hatred that utters from the national leadership. They have the ability "to carry on in spite of", to use a phrase that Dr. King used to describe an attitude of dogged determination.

You are like them as well; yours is also the spirit of dogged determination, the ability "to carry on in spite of". Why? Because without you we could not live up to our democratic ideals. Why? Because despite that inadequate national leadership causes enduring hardship for local programs, and inadequate pay for professional staff members, nevertheless you carry on. This is strength; this is revival day-to-day.

The poor are always there. They always will be. The need will always exist. There will be no time when our nation will *not* face the challenge of providing for the legal needs of the poor. You have answered the challenge with your lives. Through your various field programs, we truly live our democracy daily. And yet it is more than that. Yours is an experience that transcends the usual limits of mortal experience. True service always does. Yours is the ultimate experience. Our American prophet, Dr. King, described efforts such as yours so aptly by pointing out its supernatural quality: "to deal with the tang of the human amidst the glow of the divine." This is your challenge, your life's work.

To revive the field is to endorse the goodness of what you do. It is not to dwell on the insults from members of the national board. Put that aside. It is not to fear too greatly the complete demise of the programs, for we have the pillars of Congress and the bar leadership to buttress your efforts. Because the poor are there, you are there. That is the reality of legal services. That remains the reality of reviving the field.

In the worst of the moments for me at Board meetings, I do take sustenance in these thoughts. No matter the policy initiative that issues, frequently to undermine the field, Congress stands watch. Bar leaders actively support you in effective presentations to influential national policy makers. Moreover, I can get a lift for the spirit by remembering that the field programs and the staffs are "carrying on in spite of." And, finally, there are the poor, always the poor. For them, the need for revival in our spirits is great. It is constant. I take my comfort in recalling thoughts such as these. Even the most depressing of experiences can be overcome with time and with such recollection. You are a source of revival. Draw upon your own generous spirit!

POSITION PAPER

of the

NEW ENGLAND BAR ASSOCIATION

This paper has been adopted formally by the state bar associations of the six New England States

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Position Paper of New England Bar Association on Activities of the Board of Directors of the Legal Services Corporation

Over the past two years, New England bar leaders, together with bar leaders across the country, have taken a keen interest in the activities of the Board of Directors of the Legal Services Corporation ("LSC Board"). That interest has been motivated by what we perceived as the Board's lack of support for the time-tested field programs and support centers that have always been the backbone of federally funded legal services for the poor. During this time, New England bar leaders have become increasingly concerned with the direction of the Board, and have taken an active role in presenting to the Board and to Congress the views of their bar organizations in support of a strong and effective legal services program.

After two years of observing and attempting to work with the current Board, we are persuaded that the Board has ignored the Bar's legitimate concerns and is committed to a course of action which has had the effect of inhibiting effective legal representation of poor people. Not the least of these actions has been the Board's failure to request adequate funding for the program, while simultaneously imposing on field programs and support centers burdensome administrative requirements of dubious value that sap time and precious resources that would otherwise be devoted to client representation.

We set forth in this paper our observations on what has occurred under the administration of the current Board and give our recommendations of what the Board should do to regain the confidence of the organized Bar and all those who support federally funded legal services for the poor.

1) Activities of the Current Board:

In our view, not only has the Board failed to support the legal services program adequately, but it has also failed to establish and follow through on any kind of consistent policy. Thus, the Board's actions have been characterized by precipitous and ill-considered actions which have led to disarray at the operational level of the program. The following are some examples of the consequences of these failings.

a) Attitude toward legal services programs and their supporters - One striking characteristic, which we have observed at Board meetings and through reviewing the actions of the LSC Board, is its unremitting hostility toward the existing legal services delivery system and the representatives of the organized Bar, who support legal services. On a personal, but telling level, certain Board members have made rude and contentious remarks toward speakers at Board meetings. In other instances, the LSC Board has acted without necessary background information and sometimes on the basis of little or no advance warning. One example is the precipitous (and abortive) vote of the Board last June to eliminate direct federal grants to state and national support centers. More recently, the Board appears to be proceeding with a review of the lobbying regulations which Congress has disapproved without considering the comments it requested and received on the regulations.

The current LSC Board's tenure has been characterized by a nearly complete abdication of LSC's obligation to provide non-financial assistance to existing programs and their clients.

Regional offices, once a helping hand and a knowledgeable critic of legal services programs, have now been virtually dismantled, and all effective decisions and actions take place at the national office in Washington. Monitoring visits are now conducted principally as a pretense for gathering information that is critical of the monitored program. Seldom do monitoring visits produce final reports, and only a small percentage of the reports produced contain recommendations that are actually helpful to programs in improving their operations.

During its tenure in office, the current LSC Board has fostered virtually no constructive help to programs on such matters as training, the use and expansion of computers and financial management. This contrasts with the previous history, when one of the major functions of the Corporation was to provide advice, training and constructive criticism to programs.

In short, a majority of the current LSC Board seems, regrettably, to maintain a position of undiluted opposition to a system of delivering legal services to the poor which has the support of the organized Bar, and a system which has proven its effectiveness.

b) Actions on Funding - Even more disappointing is the Board's stubborn resistance to requesting more funding from Congress. If the Board were truly interested in improving the legal services delivery system, surely it would ask for more funds to serve the ever growing population of poor persons. Instead, the Board has not requested an increase over the prior year's appropriation for the last three fiscal years and has been an active partner in the effort by opponents of legal services to reduce or eliminate the Corporation's funding.

To compound the problem of failure to request adequate funding from Congress, the Corporation has consistently failed to spend all of the funds available to it. Still worse, the Board has, on several occasions committed unspent money hastily to ill-conceived "experiments" for alternative delivery systems. The prevailing view is that the Corporation's attempts to run experiments for the clinical and private law office delivery models have been dismal failures.

In sum, the Board's efforts to squeeze the financial support of the existing delivery system have been counterproductive, and the Board can no longer justify its failure to request additional funds from Congress.

c) Creation of Red Tape for Programs - At the same time that the Board has invested little effort in improving the existing service delivery network, it has been hard at work creating more paper work for program administrators, with the result that programs have less time and resources to represent their clients. The imposition by the Corporation of mindless bureaucratic requirements comes, ironically, from a Board appointed by an Administration which has strongly criticized government for excessive red tape. Examples of these requirements include: extensive requests for information in the annual grant applications; the Corporation's attempt to institute complete time-keeping systems in all programs; undue delays and bureaucratic requirements with sub-grant approvals; undue paper work in the Private Attorney Involvement program; excessive document requests in connection with monitoring visits; burdensome requests of programs for special information which rarely result in any constructive action; and recent attempts by the Corporation to discourage program staff from attending conferences and meetings. If the Corporation had the personnel and ability to digest and use the enormous amounts of information which it has collected from programs, one might at least understand some of the requests for information. However, it appears that much of this information is unused. For example, on numerous monitoring visits the monitors had not reviewed the vast amounts of information and materials which the Corporation had demanded that the program furnish in preparation specifically for the monitoring visit.

One particularly perverse case of the misuse of the information-gathering process took place late in 1985. After having gathered large amounts of information through the annual grant application process, LSC staff spent large amounts of time combing through each grant application and listing supposed inadequacies. These "failings" were then recorded on forms, and apparently more than half of the programs which submitted applications received calls or written material indicating that further information had to be furnished before the 1986 grants would be approved. In fact, many of the supposed inadequacies were not problems at all, or were petty quibbles with the kind of information that was submitted. On the basis of this initial review of the grant applications, the LSC staff recommended, and the Board accepted, a delay in the approval of legal services programs' 1986 annual grants for upwards of five months. When programs later submitted the corrected information to LSC (and in many cases simply repeated or only slightly varied the material previously found inadequate) apparently no grantee was denied an annual grant on account of a deficient application. This sequence of events indicates that the initial reviews of the grant application resulted in unfounded charges to support delay in the approval of annual grants. The total number of hours expended in this review and submission of modifications by field programs was both enormous and wasteful.

d) Attacks on Support Centers - Nowhere does the negative approach of the majority of the current LSC Board show through better than in its persistent attacks on the state and national support centers that assist field legal services programs. From the attempts by the LSC Board to defund the Regional Training Centers and the Computer Assisted Legal Research Projects to the Board's attempt last June to dismantle state and national support centers, it is apparent that the Board wants to wound mortally the legal services support structure.

The Corporation has recently attempted to defund two of the national support centers on extremely dubious grounds. In one case the Hearing Officer has found for the support center on all counts and in the other instance the Corporation has admitted that its charges were based on a monitoring report from which all favorable assessments of the center's work had been deliberately excluded.

A recent round of monitoring visits to national support centers resulted in a highly questionable report by the LSC Monitoring Division to the House Oversight Subcommittee. The report used, on an unattributed basis, confidential information obtained as a result of monitoring visits, when the data had not even been made available to programs for their reactions and comments or for correction of rudimentary errors. Furthermore, the Corporation's tortured attempt to expand the congressional limits on lobbying to unsustainable restrictions on legislative and administrative advocacy seems aimed mainly at the support centers.

Throughout all the Board's labors in opposition to the support centers, there has been virtually no attempt seriously to evaluate whether the support centers are important and valuable parts of the service delivery system. The Corporation did commission a study of the support centers by the National Opinion Research Corporation (NORC). After receiving responses from field programs and private attorneys which overwhelmingly endorsed the existing system of support, the Corporation has consistently, and inexplicably, refused to release the final NORC report. Typically, the Board has taken actions with respect to support centers with very little background documentation to commend them. The unflagging effort to undermine the support centers is a sorry chapter in the history of this Board.

e) Relations With Congress - We would hope that any LSC Board would formulate an agenda for progress in the development of legal services to the poor and would work with Congress to advance that agenda. This Board has not done so. Indeed, it is painfully obvious that this Board, through a series of miscues, has destroyed its credibility with key persons in both parties in the Congress. Few federal agencies, much less one like LSC that is intended to be independent from political influence, have been subjected to so much direct control by Congress and its committees. We believe that the Board will not be able to overcome its negative reputation in Congress unless it makes a complete turnabout in its approach toward legal services.

2) Our Recommendations - Although some members of the Board might wish that federal funding for the Corporation would disappear or be seriously diminished, or that Congress will accept further restrictions on the activities of legal services attorneys, it is unrealistic for the Board to expect this to happen. The fact is that the Board has fought its battles and has lost. In fact, with every new action the Board seems to dig itself in deeper, with Congress, with the public and with those who support the legal services program. The time has come for the Board to give up the fight to eliminate or seriously cripple the current legal services delivery structure. Instead, the Board should take concrete actions to redeem itself with all those institutions with whom it must work. The following is a suggested program to start down this path.

a) The Board should eliminate the hostility which it has demonstrated thus far to the organized Bar and the legal services programs which have earned their support. Instead, the Board should engage in a cooperative and realistic dialogue with every element of the legal services community, including representatives of clients. Examples of this cooperation include reinstitution of the past practice of asking legal services programs, clients, the Bar and other interested persons to review and comment on LSC staff drafts of policy changes before they are formally presented to the Board; publication of an up-to-date staff directory that clearly delineates staff responsibilities so that people know who to contact if they need information or a response from LSC; and holding full Board and Committee meetings with enough advance notice, based on a detailed, published agenda, in geographically and physically accessible locations, so as to encourage open discussion of LSC policy.

b) The Board should request considerably more funds from Congress to sustain the existing field structure and to expand its horizons. Before proposing any new directions or further experimentation, the Board should engage in an open discussion with Bar leaders, legal services programs and clients about the directions in which it wishes to move the program.

c) The Board should again establish LSC as a catalyst for improving the delivery of high quality legal assistance to the poor. Individual programs are developing new methods and techniques which could benefit programs in other areas. The Corporation should act as a clearing house for information about positive developments and offer technical assistance to foster useful ideas throughout the country.

d) The Board should streamline its own bureaucracy and eliminate undue red tape and paperwork for programs. This would include a greatly streamlined grant application, rigorous time frames and procedures for approving sub-grants, foregoing its insistence on complete timekeeping for legal services and ensuring more objective and carefully considered monitoring of programs. There are far better and more effective ways to learn what programs are doing and to improve them than to require more paper from them.

e) The Board should end its crusade against support centers and accept those programs as legitimate and important parts of the legal services delivery system.

f) The Board should hire professional managers and staff who have experience in the operation of legal services or similar programs and who have a proven commitment to the delivery of high quality legal services to the poor.

We hope that the Board will carefully consider the views and recommendations set forth in this paper. We offer the beginning of a constructive dialogue between the Corporation and Bar leaders of this country, who vigorously support legal services, so that the current war can end, and so that LSC can start to regain the trust and cooperation of supporters of a strong and effective legal services program.

STATEMENT OF MARTHA BERGMARK, COCHAIR, PROJECT ADVISORY FUNDING CRITERIA COMMITTEE

Senator HOLLINGS. Ms. Bergmark, please proceed.

Ms. BERGMARK. Good morning. I am Martha Bergmark, and I am cochair of the Project Advisory Funding Criteria Committee. I am also the executive director of Southeast Mississippi Legal Services, a legal services field program serving nine counties in south Mississippi.

My prepared testimony, which you have before you, speaks to the details of the project advisory groups' request for 1988 appropriations of $391 million. The prepared testimony explains how a funding level of more than $500 million would be required to achieve what we have come to call minimum access for legal services, which was achieved briefly in 1981, and it describes our proposal to achieve this goal over a 3-year period so that the funding request for this year is a much more modest $391 million.

My prepared testimony also provides you with strong justification for the continuation of appropriation rider language which would protect legal services deliverers from the unfettered discretion of the current Legal Services Corporation Board.

Mr. Whitehurst has spoken eloquently to that need, and Mr. McWilliams has spoken to the need for additional funding.

So I would like to spend the couple of minutes I still have with you to describe our legal services delivery system in my home State of Mississippi. I think our experience there provides a microcosm of the impact of the Federal funding situation of recent years.

First of all, the picture in Mississippi has a bright side, thanks, in very large measure, to your commitment, the commitment of this Congress, to our efforts.

Your Federal appropriations provide the core, literally, the lifeblood, of a delivery system that includes six field programs, a State support center, a statewide pro bono project that is a joint venture of the Mississippi State Bar and Legal Services and a wide variety of other private attorney delivery mechanisms.

It is this coordinated delivery system which enables the indigent client to gain access to our justice system from any of several vantage points, and it is this working partnership among the legal services providers and the private bar which has enabled us to leverage and maximize the resources that we have.

Unfortunately, though, there is a down side to the picture in Mississippi, as well.

The down side is that there are 40 percent fewer Legal Services staff attorneys in Mississippi than there were in 1981. Total staffing is down by 40 percent. These staffing cuts correspond closely to the 37-percent loss in real Federal dollars over this same period, so that the impact on case service has been blunted, but it has not been offset by the increased private attorney involvement that I have just described. Even if our new, IOLTA programs, Interest on Lawyers' Trust Account Program, reaches its projected potential, it will only supplement the current Federal funding by about 5 percent.

The increased participation of private attorneys in this system has convinced the Mississippi State Bar that the resources available in Mississippi are just totally inadequate to the need, so that last year, the State Bar passed a resolution supporting a Federal funding level of $385 million.

At the same time, the State Bar reaffirmed its own commitment to dedicate itself to increasing resources locally through the Mississippi pro bono projects and the IOLTA project. In recognition of the unmet need, private bar leaders were led to form something called Mississippians for Equal Access to Justice, which was inspired by the efforts of Mr. Whitehurst and the preservation of bar leaders for the preservation group nationally, to explore other funding opportunities and funding sources. So it is clear that in Mississippi, a continued and enhanced Federal commitment is the clue to allowing us to leverage our resources other resources and continue to maintain an available delivery system. So we encourage you to provide that.

[The prepared statement of Martha Bergmark follows:]

Senator HOLLINGS. Oh, my gosh. I have got five bells up there. But the volunteers down in Mississippi and Texas say that pro bono works? Lawyers actually volunteer?

Mr. WHITEHURST. Yes.

Ms. BERGMARK. Yes, sir; we have 1,000 out of a 4,400 member bar participating and handling cases, but it only supplements the core Federal funding that is critical to delivering these resources.

Mr. WHITEHURST. I second that. It is working beautifully, but it works only because we have such good and fine Legal Services Corporation programs, field programs. It is the combination, the synergistic effect. Two plus two equals five when we are working together.

Senator HOLLINGS. I appreciate both of you appearing here. The committee is grateful to you. I have got to run upstairs. When are you going to run for office?

Mr. WHITEHURST. Oh, no, I am not running for office. I am going back to law in a month and a half.

Senator HOLLINGS. You ought to run for Governor one time.

Mr. WHITEHURST. I agree with that.

Senator HOLLINGS. Nice to see you.

Where is your home in Mississippi?

Ms. BERGMARK. I am in Hattiesburg down in Mississippi. I am practicing law down there.

Senator HOLLINGS. Very good. Thank you.

[Short recess.]

TESTIMONY OF THE PROJECT ADVISORY GROUP

BY

MARTHA BERGMARK

CO-CHAIR, FUNDING CRITERIA COMMITTEE

PROJECT ADVISORY GROUP

I. INTRODUCTION

On behalf of the more than three hundred local public law firms providing civil legal representation to a client population in excess of forty-five million poor persons, the Project Advisory Group requests a Congressional appropriation for the Legal Services Corporation for fiscal 1988 of $391 million. This amount is necessary to continue the efforts to attain the minimum access goal of two attorneys per 10,000 poor persons which Congress, the field, and the Legal Services Corporation had sought and achieved in 1981, when the appropriation reached $321.3 million.

Since that time, federal funding was reduced by 25 percent in fiscal 1982 to $241 million, remained frozen at that level in 1983, and received only modest (inflation) increases to $275 million in 1984 and $305 million in 1985 where it has been frozen, once again. While Congress has reaffirmed its commitment to the minimum access goal in each fiscal year since 1984, the current LSC board has declined to ask Congress for any additional funding since the board's installation in 1985.

The Legal Services Corporation Board continues its failure of leadership in seeking adequate funding for the delivery of services. Local recipients and virtually all other supporters of the civil legal assistance program recognize the need and call for significant additional funding. The American Bar Association and the more recently formed group of state and local bar association, Bar Leaders for the Preservation of Legal Services for the Poor, once again join the Project Advisory Group in urging increased funding.

Pursuing a course of benign neglect at best, or intentionally destructive conduct at worst, the Legal Services Corporation totally ignores Congressional intent to retain the minimum access concept with a goal of $15.00 per poor person. In adopting its $305.5 million mark on January 30, 1987, the LSC Board rejected, by one vote, a recommendation of its Audit and Appropriations Committee to advocate a $325 million funding level. This Board's immediate predecessor submitted its request for a $325 million mark in fiscal 1985, proposing an increase of $50 million over the 1984 appropriation.

The hastily drawn funding reallocations within LSC's $305.5 million would not only fail to maintain the *status quo*, but would actually reduce the quantity and quality of legal services delivered nationally. The LSC proposal would reduce funding for basic field programs by nearly $5 million, while raising its own administration and management budget from $7.4 million to $12.3 million. While it is true that the $7.4 million line was mandated by Congress in order to force LSC to use its fund balance, the increase to $12.3 million is 66 percent greater than $7.4 million.

The LSC Audit and Appropriations Committee Chairperson, Pepe Mendez, who stated during public discussion of the LSC mark that he (not LSC staff) had written the mark recommendation, offers no explanation for the proposed $4.8 million reduction in basic field funding. Nor is there any explanation for a significantly greater allocation to administration and management.

While LSC's current Board cited inexperience and lack of information as the basis for their refusal to ask Congress for any higher funding for fiscal 1986 than was appropriated for 1985, a majority of them has done nothing in the more than two years of their tenure to attain information on which to make funding decisions. The LSC board not only refuses to accept the minimum access concept which was formulated by the Corporation's founders, is advocated annually by PAG and has been recognized by Congress as a basic funding goal for more than 10 years, the board has wholly failed to develop any alternative funding concept.

The LSC recommendation to freeze funding for fiscal 1988 at the 1987 level should not be given any more credence than has been given to the LSC's Board Chair's position that LSC be abolished, an assertion made only two weeks after his vote on the 1988 mark recommendation. Addressing the American Bar Association at its mid-year meeting in New Orleans on February 12, 1987, the highest level official of the Legal Services Corporation praised President Reagan's annual recommendation of zero funding for the LSC. Lacking any analytical basis or considered, deliberative studies, Board Chairman W. Clark Durant called for replacement of the Legal Services Corporation. That position ignores the principles articulated by Congress upon the founding of the Legal Services Corporation. Congress

should disregard a "freeze" budget proposal advanced by the LSC Board whose one vote majority includes a member espousing positions such as Mr. Durant's.

In the absence of a strong voice of the Legal Services Corporation, we hope you will listen to the public law firms who, along with the Bar and our client community, are the other partners with Congress in this struggle of many years to make equal justice a reality.

II. THE NEED OF LEGAL SERVICES PROGRAMS FOR SIGNIFICANTLY INCREASED FUNDS

Mike McWilliams, who chairs the house of delegates of the American Bar Association, in his address to the National Legal Aid and Defenders association annual conference on October 21, 1986 reported that only 20 percent of the legal needs of the poor are currently being met. When it is considered that all funds, LSC's and other private and public sources, together with the *pro bono* efforts with the private bar barely meet 20 percent of indigents' legal needs, far more than $200 million in additional funding is required to approach meeting the minimum need. Not only has the legal profession long held securely to the basic tenet of our society that all persons, regardless of their economic status, should have access to justice, Congress, in creating the Legal Services Corporation, declared that "there is a need to provide equal access to the system of justice in our nation for individuals who seek redress of grievances".

The staff of the LSC-funded public law firms are repeatedly the only persons who stand between poor people and disaster for themselves and their families. These public law firms provide basic protection by enforcing the law where clients' rights are violated, by representing clients' interests in obtaining changes in the law where its effect is unjust, and by informing clients of their legal rights and responsibilities so that they can help to prevent injury to themselves. But even at an appropriation level of $391 million, many poor people will slip through the holes in the legal safety net and suffer irreparable damage.

Legal Services has never been funded at any realistic level of need. The Project Advisory Group calculates the "minimum access" funding need of nearly $533 million based on the 1980 census poverty count of 29.5 million persons. Congress has defined a funding goal of $14.56 per poor person, yet the funds allocated in 1986 to LSC public law firms amount to $8.86 per poor person, only 61 percent of that goal. This is certainly an inadequate sum with which to meet the legal needs of our nation's poor for a year.

The inadequacy of the funding level is compounded by a number of other factors. The public law firm eligible client population includes all persons below 125 percent of the 1980 census poverty line (approximately 40 million people) which reduces annual per capita funding from $8.86 to $6.63. Economic hard times have substantially increased the number of low income persons since the 1980 census. Studies suggest that there may be at least 46 million eligible clients at this time. On that basis, our per capita funding would be $5.68 per poor person per year.

In addition to the increase in the number of poor persons eligible for legal assistance, there has been an increase in the complexity and seriousness of their legal problems. The stakes are higher for our clients because it is often a potential loss of income threatening their very survival which creates the need for legal assistance. The consequences that befall an eligible applicant rejected by a public law firm because of insufficient resources are worse than ever. The legal system adds to that injury in another way in that poor people expend a much larger share of their income on food, housing and energy than do persons with higher incomes. Food, housing and energy are necessities of life. They are also, in the lives of poor people, regulated by law - food stamps and medical assistance eligibility, access to safe and decent housing, public housing evictions, and utility cut-offs are common legal problems for public law firms. The "new" poor present different legal problems further straining resources - examples are home and farm mortgage foreclosures, massive job loss and worker displacement, and corporate bankruptcy reorganization resulting in lost pension and health insurance coverage.

We have attempted, through our previous testimony to Congress (and in our presentation to LSC) on the annual appropriation mark, to chronicle the impact of the diminution of federal resources on the ability of LSC's public law firms to address the growing needs of poor persons. The 1983 "Report on the Status of Legal Services for the Poor" by the Washington Council of Lawyers and legal "needs assessments" done by a variety of states, including the most recently published Colorado study "Assessing the Legal Needs of the Poor in Colorado", summarized at 20 Clearinghouse Review 200, June, 1986, all describe significant unmet need. The conclusion which must be drawn is that which Mike McWilliams articulated: only a small percentage of the legal needs of our nation's poor are being addressed.

Although we have repeatedly urged the Legal Services Corporation to conduct a definitive national study of the legal needs of the poor, LSC has yet to do so (in spite of budgeting substantial funds for just such a purpose). The LSC Board has instead criticized its predecessors' minimum access funding concept (which Congress has accepted) and failed to request any increase in funding which would help to close the gap to equal justice.

III. THE MINIMUM ACCESS CONCEPT

The Project Advisory Group bases its 1988 budget mark on the Legal Services

Corporation's historical "minimum access" concept. The minimum access goal was originally determined by LSC in 1975 as the level of funding necessary to support two lawyers for every 10,000 poor persons. A succession of appropriations increases beginning in fiscal 1976 resulted in the achievement of minimum access, as originally defined, in fiscal 1981.

The original minimum access formulation was derived from a unit cost analysis developed by LSC in 1975. This unit cost analysis estimated the average annual cost of two attorneys to be $70,000 per 10,000 poor persons, or $7.00 per poor person. The cost was derived from a unit cost model which consisted of an office with a staff of six attorneys earning an average of $12,333 annually, one supervising attorney earning $14,000, three paralegals earning an average of $7,000, and five secretaries and administrative staff earning an average of $7,500. Personnel costs, including fringe benefits, were estimated to comprise about 75 ercent of the total budget for the unit. LSC's original cost estimate was very conservative indeed. This observation is borne out by the fact that such a staff, earning these salaries today, just twelve years after the original cost estimate, would themselves fall below the poverty level and would therefore be eligible for the very legal services being provided by their own office.

Inflation had raised the original $7.00 per poor person cost to $14.56 at the end of 1985 and, with an estimated 3 percent cost of living increase, will become $15.00 per poor person in 1988. (If the staff salaries in the unit cost analysis above were to be adjusted by the 114 percent increase in inflation, e.g., $12,333 average staff attorney salaries in 1975 would become $26,398 in 1988, then all costs which were part of the unit cost analysis above would remain very modest.)

The Project Advisory Group calculates the total funding necessary to obtain the minimum access goal of $15.00 per person for all poor persons nationwide would require an allocation to basic field programs (the public law firms) of $433 million. The 1987 LSC appropriation for basic field programs is nearly $263 million, thus requiring an additional $180 million to achieve the minimum access level for delivery offices. An additional $90 million would be required to provide adequate funding for all non-census based components of the LSC budget (e.g., Native American and migrant programs, state and national support, LSC management and administration, etc.). That amount is derived from the proportionate historical relationship census and non-census components bear to the total LSC budget, i.e. approximately 83 percent to 17 percent respectively. The total appropriation required using 1987 dollars would be approximately $533 million.

However, we acknowledge that an increase of $228 million to reach the required $533 million would be fiscally and politically unrealistic and that a three year staged return to minimum access may be more reasonable. This is essentially the position PAG has urged since fiscal 1985, adjusting each year for inflation. A three year plan including an inflation factor supports an increase in the first year of $86 million, resulting in a 1988 appropriation of $391 million.

Minimum access continues to be a modest goal. Contrast the availability of two attorneys per 10,000 poor people with the reality of twenty attorneys per 10,000 person in the population as a whole or the twenty-eight attorneys per 10,000 non-poor persons.

IV. "NON-CENSUS BASED" PROGRAMS

Grants to basic field programs in PAG's proposed request would comprise just under 83 percent of the total mark of $391 million. Another three percent would go to LSC administration and experiments. The remainder would fund non-census based activities. These include Native American and migrant programs, supplemental delivery services, training, Clearinghouse and support services. PAG's purpose is to return all of these activities to funding level in 1988 which would have the same proportionate relationship to basic field funding as existed in 1985.

A. Migrant and Native American Programs

About half the Native American and nearly 90 percent of the migrant recipients are components of basic field programs. Consequently, these programs must absorb in their basic field grants whatever erosion occurs due to 1985 and 1986 inflation and the fiscal 1986 freeze to Native American and migrant funding. As long as the need for legal services far surpasses the resources available to meet it, questions of the probable size of these special client populations will be largely irrelevant. The proportionate levels existing in 1985 resulted directly from 1981 decisions about the adequacy of relative support for "special" and "basic" client populations. Until better information develops or funding levels exceed minimum access, LSC should seek to maintain historic proportionality.

B. State Support

The state support units funded by LSC have a long history of essential service to field programs and clients. Six of these units were established in the late 1960s. In the late 1970s, LSC completed a thorough study of the need for state support, concluding that such support is critical to the effectiveness of client representation by field programs. As a result of this conclusion, LSC committed substantially more funding to state support in the late 1970s. Now, there are some 66 state support grants to programs in 43 states.

As field program staff, volunteers and contractors increase, the need for support services increases. Support funding should remain in at least the same proportion to the LSC budget as it was in 1985. However, as LSC and the National Organization of State Support Units have discussed during 1985 and 1986, a number of states do not receive funds designated for state support. Though most of these states receive basic field allocations well above the "minimum funding" floor (now $8.51 per poor person), they all remain well below minimum access. Additionally, there are several states whose state support funding is not sufficient to support a viable support entity. ($125,000 has been calculated as the funding minimally necessary to do so.)

LSC has discussed various support funding redistribution schemes to address the needs of unfunded and underfunded states. Conceptually, however, state support is no different from basic field. Until state support funding rises to at least 4 percent of total funding to field programs in any state, it is lower than the amount needed to provide minimally adequate support to those programs. Consequently, redistribution would remove funds from "less" inadequately funded states to give it to "more" inadequately funded ones. PAG opposes such redistribution.

The most egregious underfunding problems should be addressed by establishing a national level of state support funding at 4 percent of basic field. Additional, new funds resulting from this strategy would go first to establish state support programs at a minimum funding level of $125,000 in those states which do not now have them and would increase the funding level in underfunded states to at least $125,000. PAG's recommended "mark" includes state support funding at 4 percent of the basic field level.

C. National Support Centers

Most of the national support centers were established in the late 1960s. The remainder were funded in the late 1970s following a comprehensive study by LSC of national support need.

From 1975 to 1979, national support funding declined as a percentage of basic field funding. In 1980 and 1981, based on a study of unmet support needs, LSC began an expansion of national support activity. That expansion was cut short by the reductions of 1982 when national support funding, like that of most other programs, was reduced by 215 percent. In addition, national support centers had received funding from other federal agencies. Most of that funding was reduced or eliminated in 1982.

Since 1982, national support centers have received some funding increases, but, taking inflation into account, have never been restored to their 1981 levels. Further, because national support center funding was frozen in 1986 and 1987 when field programs received an overall increase, national support centers are now receiving less funding relative to basic field than in 1981.

Based on this history, PAG considered two factors in calculating the recommended appropriation for national support. First was the goal of restoring national support to the proportional share of funding it had received in 1981 relative to basic field and at the same time to restore its dollar level of funding adjusted for inflation. The other primary factor was one of equity with other programs. Since the PAG recommended mark would move field programs only a third of the way back toward minimum access, national support funding is increased commensurate with the basic field increase.

Weighing these two factors, PAG recommends that national support be increased in the same proportion as field programs, using 1985 as the base year. Under this recommendation, national support centers would achieve approximately the same progress toward the interim goal of restoring 1981 real dollar levels as the field programs will achieve.

D. Regional Training Centers, Clearinghouse, and Computer Assisted Legal Research (CALR)

In 1980, LSC devoted approximately $6 million to training. By comparison, PAG's fiscal 1988 funding recommendation is $1 million for regional training centers, $1.3 million for Clearinghouse, and $.9 million for CALR, for a total in these categories of $3.1 million. While the comparison is not a precise one, many of the training and support functions performed by regional training centers, Clearinghouse and CALR were once addressed by LSC's allocation of double the amount of funds called for in PAG's recommended mark. Thus, PAG recognized that training and support needs would remain substantially underfunded even at its recommended mark level. However, PAG has sought to restore this funding to its proportionate share of 1985 basic field funding and to restore its dollar level of funding adjusted for inflation.

E. Reginald Heber Smith Fellowship Program

PAG strongly urges the reestablishment of the Reggie program. In doing so, LSC should continue emphasis on Reggie's two fundamental features: recruitment of minority attorneys and focus on community lawyering. LSC also should assure the historical allocation of Reggies to Native American and migrant programs and should return the program;'s administration to a grantee outside LSC headquarters.

A well administered Reggie program assures that fellows become wholly involved in the communities they serve. Their continuing presence in those communities heightens local programs' understanding of their clients' most critical needs. Creative, aggressive Reggies assure that programs (and LSC) focus on the Legal Services Corporation Act's mandate that LSC improve opportunities for low-income persons (section 1001(3)). To the extent that Reggies themselves come from low-income communities, their contribution or "community lawyer" links to clients can be even more powerful. LSC should give high priority to reestablishing the Reggie program.

F. Client Support

An entity should be established to fill the void left by the defunding of the National Clients Council. Indeed, such an entity should be the primary vehicle through which LSC assures minimally necessary training of the client members of local programs' boards.

The Corporation should promote client self-sufficiency by creating a client entity which can advise it and its senior staff about client needs nationally. PAG, consequently, recommends that LSC create a replacement for the National Clients Council which can be a mechanism through which clients in various parts of the nation can provide the support and training which clients throughout the nation need.

G. LSC Management and Administration

LSC's fiscal 1987 Congressional appropriation designates $7.4 million for corporation management and administration. The conference managers estimated that LSC would have about $3 million in carryover funds available for this line item, for a total amount left in LSC's discretion of $10.4 million.

In recommending a fiscal 1988 budget allocation of $10.6 million for management and administration, PAG has taken into account - as apparently did Congress - that in recent years LSC has failed to spend all or even most of the funds budgeted to this category and has run up huge fund balances. LSC has exclusive access to the data which would explain this occurrence. Consequently, PAG's recommendation of $10.6 million incorporates only a nominal increase over fiscal 1987 in this category and contemplates full expenditure of the current management and administration appropriation even though LSC in recent years has not fully expended funds allocated to this category.

H. Program Development

Program development funding was not considered by PAG to fit properly in the Direct Delivery category since it has been treated as the Corporation's discretionary money for experimental models. LSC itself recognizes that the law school clinic and voucher programs remain experimental, acknowledging in its budget presentation the denial of LSC's reprogramming request to annualize funding for the law school clinic program and that the "voucher model is worthy of study".

The PAG recommendation categorizes program development funding under the Corporation heading as part of the line item Program & Training Development, Technical Assistance and Training Reserve.

V. THE NEED FOR CONTINUED CONGRESSIONAL CONTROL

In each of the last five years, the Project Advisory Group has asked Congress to attach protections to the annual appropriation. The reason for such requests has largely centered on the antics of a series of recess board appointees, many of whom have been openly hostile to the entire delivery system and who sought to dismantle it from within (following the lead of their appointing officer, the President, who has proposed zero funding and the abolition of LSC for seven straight years).

Although confirmed in 1985, the current LSC Board has not done much better than the recess appointees. In fact, many of its ill considered actions over the last two years do little to distinguish it from its predecessors. In the absence of anything other than anecdotal "evidence", LSC has been unsupportive of virtually every aspect of the delivery system. It has, at various times, proposed precipitous cuts in major program components such as its 1985 proposal to cut by 21.6 percent funding to migrant, Native American, state and national support programs.

LSC has thereafter sought through a "privatization" concept to eliminate funding for existing state and national support centers - a concept which was rejected by virtually the entire community of basic field programs, their primary users. The June, 1986 LSC Board decision to terminate direct funding for state and national support and the Clearinghouse produced a Resolution from the PAG Steering Committee.

Adopted unanimously on July 11, 1986 the resolution, objecting in the strongest possible language, went on to state:

> This decision plainly is intended to dismantle the entire legal services support system, and would certainly have this effect. The decision is

> without any basis in reason or fact: legal services programs and clients do not support this change, and the level of satisfaction with support services is high. It would be impossible to maintain an effective and efficient system of support under the Corporation's proposed scheme. The decision would undermine and harm the actual representation of clients, and impair legal services lawyers' ability to meet their ethical obligations to their clients. The Project Advisory Group demands that the Legal Services Corporation Board cancel this action, and that national and state support programs and the Clearinghouse be maintained intact.

LSC's 1986 privatization of support proposal was also submitted as a congressional reprogramming request and rejected, a clear indication of Congress' position. Yet several months later in its January 29-30, 1987 board meeting, LSC, lacking any analytical basis whatsoever, proposed once again to move support center funding over to the basic field line (after removing $4.8 million in the process). While Chairperson Mendez did not present LSc's budget to Congress in such a fashion, he did indicate in response to questions from the House subcommittee, his interest in cutting support funding in the guise of restoring $4.8 million to basic field grantees.

While it can only be inferred that LSC's underlying motive in privatizing support is the elimination of the existing support centers (that inference is further strengthened by the placement of so many national support centers on month to month funding for 1987), it was not necessary to draw inferences in the 1986 treatment of Clearinghouse. LSC alternately sought to drastically cut and then eliminate funding for the Clearinghouse program-suggesting that the function could be done more effectively "in-house". This proposed action was not done after careful study and upon a sound analytical basis. It was instead a precipitous, ill considered assault on a highly respected component of the legal services support structure.

This LSC Board has just submitted its third appropriation request maintaining an overall mark at a *status quo* level, i.e. two at $305 million and the other at $291 million. While LSC professes concern about alleged great disparities in the basic field funding distribution levels, it has not only rejected the minimum access concept, but has also failed to ask for any additional funding for its primary delivery system. Instead, this board has regularly urged some variation of a funding redistribution scheme, taking away substantially from some programs in a so-called "equalization" effort. That too has been rejected by most of the very programs which might benefit greatest. (The benefit to the lowest funded programs would amount to only $0.35 per capita.) Equalization is seen largely as another of the LSC proposals which would wreck havoc on the existing structure.

In its 1988 Budget Request, LSC requests modification of the "legislative language in the fiscal 1987 appropriation regarding the funding formula for, and the funding levels of, LSC programs ... because it removes from the board the fundamental power to allocate appropriate levels of funding to the most efficient providers of legal services". This LSC Board and staff have done nothing to inspire confidence that they have the ability, even today, to determine in any rational manner, the most effective and efficient methods of delivery of services. The illustrations outlined above are but a few examples of the whimsical and capricious manner of LSC funding decision-making.

Moreover, after repeated assertions by LSC that the existing delivery components were ineffective and/or guilty of widespread violations of the Act, LSC's significantly intensified monitoring efforts, which themselves caused massive disruption, have produced almost uniform reports of effective, highly competent delivery by service providers. Yet board proposals surface which depart form a census based funding distribution altogether, by permitting discretionary awards to "special, meritorious" programs.

This LSC board has also sought to simplify its regulatory process so as to enable it to more easily defund existing programs. Suggesting in its budget request the further need to eliminate the formal reprogramming requirement, it asserts that "the responsibility of the Board of Directors is to manage the Corporation. Included in prudent management is promulgation of considered and necessary regulations." Query as to whether it is the proper function of the board, and not the staff, to manage. Management appears to be the function of this board, however. The greater issues are whether the board (or staff) engages in prudent management and whether their promulgations are considered and necessary. PAG believes the record of their performance speaks clearly to the contrary.

LSC's 1988 budget request fails to even mention the work of its staff program grantees, the public law firms which receive over 80 percent of its annual appropriation. The Corporation instead chooses to focus attention on the limited and inconclusive record of its experimental models such as law school clinics and voucher programs. Nevertheless, the record of service and accomplishments of LSC's field staff offices has been widely acclaimed as highly effective, professional and of high quality.

One cannot help but conclude that the Legal Services Corporation's real agenda is the dismantling of the entire delivery system. While it has publicly disavowed support for the position asserted by its chairman (that LSC be replaced) a majority of the LSC board nevertheless would seek to replace much, if not all, of the existing structure.

PAG therefore urges the continuation of the language contained in the 1987 appropriation (P.L. 99-591). Specifically, PAG requests that: Congress protect all existing elements of the delivery system; include a funding formula which seeks to move basic field programs proportionately toward the minimum access goal; and, continue the reprogramming provisions already in place.

VI. CONCLUSION

While LSC's freeze budget request proudly points to non-LSC funding of $106 million available to basic service providers, it must be remembered that the census-based programs are funded at $261.3 million in 1987, $180 million short of the minimum access level of $441 million. Even if all outside funding was available to local service programs, census-based programs would still be $74 million short of minimum access. And it is clear that such funds were not intended to bring programs up to minimum access, but instead to help supplement the federal commitment to funding at a minimum access level through LSC.

An appropriation of $391 million is necessary to continue the efforts to attain the minimum access goal of two attorneys per 10,000 poor persons. In addition, Congress must continue to protect against LSC dismantling efforts.

ATTACHMENT 1

PROJECT ADVISORY GROUP
FY 1988 BUDGET MARK
APPROPRIATION RECOMMENDATION

	CONFERENCE REPORT FY '87 CONTINUING RESOLUTION	PAG'S FY 1987 REQUEST	PAG'S FY 1988 RECOMMENDATION
I. DELIVERY OF LEGAL ASSISTANCE	$ 279,013,672	$ 344,972,000	$ 351,699,000
A. FIELD PROGRAMS	278,013,672	336,472,000	343,033,000
1. Basic Field Programs	261,293,672	315,375,000	321,525,000
2. Native American	7,022,000	8,770,000	8,941,000
3. Migrant Prog./Comp.	9,698,000	12,327,000	12,567,000
B. SUPPLEMENTAL SERVICE	1,000,000	8,500,000	8,666,000
1. Supplemental Field Prog.	1,000,000	1,855,000	1,891,000
2. R. H. Smith Fellowships	0	6,645,000	6,775,000
II. SUPPORT FOR THE DELIVERY OF LEGAL SERVICES	17,370,492	26,848,000	26,505,000
A. TRAINING (See notes 1 & 2)	1,000,000	1,836,000	1,005,000
1. Regional Training Ctrs.	623,964	986,000	1,005,000
B. OTHER SUPPORT	16,746,528	25,012,000	25,500,000
1. National Support	7,528,218	9,460,000	9,645,000
2. State Support	7,842,866	12,627,000	12,873,000
3. Clearinghouse	865,000	1,221,000	1,245,000
4. CALR Grants	510,444	860,000	877,000
5. Client Support	0	844,000	860,000
III. CORPORATION	9,115,836	13,180,000	12,796,000
A. MGMT. & GRANT ADMINISTRATION	7,400,000	10,400,000	10,603,000
B. PROGRAM & TRAINING DEVELOPMENT, TECHNICAL ASSISTANCE & TRAINING RESERVE	see note 2 1,715,836	2,780,000	2,193,000
TOTAL	$ 305,500,000	$ 385,000,000	$ 391,000,000

Note 1. Program and Training Development Assistance and Training Reserve (Client) are in Line III (B) as PAG recommended in its FY 1987 request.

Note 2. Combines two lines from Conference Report: Program Development at $1,339,800; and Technical Assistance at $376,036.

MARITIME ADMINISTRATION

Senator HOLLINGS. The eighth and final panel is Admiral Miller, from MIRAD and Bruce Silverglade of the Federal Trade Commission; Daniel Bell on the Securities and Exchange Commission and Allen Kassof on the USIA.

STATEMENT OF REAR ADMIRAL FLOYD H. MILLER, USN [Retired] PRESIDENT OF THE STATE UNIVERSITY OF NEW YORK, MARITIME COLLEGE

Senator HOLLINGS. We will first hear from Admiral Miller.

Admiral MILLER. Good afternoon, Senator.

Senator HOLLINGS. Good afternoon, sir.

Admiral MILLER. I will be representing the six State maritime academies and I am accompanied by Admirals Almer and Clayton from the Massachusetts and Texas Maritime Academies.

We have submitted testimony. We would like to express our appreciation for the support of this subcommittee over the years. Over the last 2 years, OMB and the administration have proposed to essentially eliminate Federal funding for the cost-effective State maritime academy system, the recruiters, trainers and educators for the maritime industry.

So that we may continue, we appreciate your support for Senate bill 1800. This year, the companion bill in the House is H.R. 953. We are here to address two issues: No funding of the President's budget for fiscal year 1988 and a MARAD proposal to lay up our training ships after the 1987 training cruise.

The President cites oversupply of officers as the reason for this action, yet on one hand, his own report on the national security strategy of the United States expresses great concern for the lack of merchant mariners in the near term to meet our current sealift requirements.

This finding is also in a recent Navy/Marine manpower study, a GAO study and a transportation institute study.

The Navy study reaches this conclusion assuming that the State and Federal academies continue their output; it does not even address nearly 80 percent of the effective U.S. controlled shipping, the NDRF and economic shipping.

It seems that the right hand doesn't know what the left hand is doing. The signal is confusing to our candidates and prospective candidates. Collectively, we produce about 700 graduates a year who can be called on for licensed and unlicensed positions for at least 6 years. Our placement in the industry and in Armed Services is good now. Jobs are available.

We are an expansion base for national emergencies and have been so since 1874. Our cadets pay more for their 8-year obligation in the Naval Reserve and Merchant Marine Reserve than the Federal Government does. We are cost effective. The states and students pay more than the Government for their education. MARAD knows the timing of ships based on the President's proposal is just that; it is based on a proposal.

The Congress provided the funds for fiscal year 1987 to operate and maintain the ships. Loss of the ships will indeed sour our moral and our cadets laboratories designed to meet Federal law, and they also can be called on quickly to serve as troops.

These ship costs should drop in the future as we are working with Navy and MARAD perhaps to place ships in the RAF. The money directed to the academies is not money spent and gone. It is money invested in the future of our Nation and its maritime industry.

We request your support for Senate bill 1800 so that the State maritime academy system may continue.

NEW YORK TRAINING SHIP

Mr. Chairman, I would like now to address another just related issue: Replacement of New York old and outmoded training ship.

Senator HOLLINGS. I was wondering whether you were going to mention D'Amato's $10 million.

Admiral MILLER. Yes, sir.

Senator HOLLINGS. He got you up here?

Admiral MILLER. No, sir; I came myself.

Senator HOLLINGS. Very good.

Admiral MILLER. He is standing behind me, I hope.

Senator HOLLINGS. He is standing behind you, I can tell you that.

Admiral MILLER. Through the wisdom of the Congress, $8.5 million was appropriated in 1984 for a new training ship. Congress subsequently has overturned several administrative attempts of the administration to defer this funding. An adequate ship has been selected and an additional $10 million is required so that this task may be completed in the one-step process.

Delay for accomplishing this task in a two-step process will cost the Government additional funding. I respectfully submit that the required $10 million be appropriated not later than fiscal year 1987.

That concludes my statement.

Senator HOLLINGS. How do I justify that demand? Why not a nice ship in California or Massachusetts or Texas?

Admiral MILLER. Massachusetts has a relatively new ship already.

Senator HOLLINGS. All the rest of them have rather new ships?

Admiral MILLER. No, sir; they are standing behind me. We have been working with the Navy and MARAD relative to taking, for the smaller schools, ships that are already in the Ready Reserve fleet, and converting them. This is a proposal that MARAD and the Navy are studying at the present time.

Senator HOLLINGS. That is what I was thinking, because right now we can use them.

Admiral MILLER. Yes, sir.

Senator HOLLINGS. Good. We support you. Let's see now.

Admiral MILLER. Thank you, sir.

[The prepared statement of Adm. Floyd H. Miller follows:]

SUPPLEMENTAL STATEMENT OF THE PRESIDENT OF STATE UNIVERSITY OF NEW Y RK MARITIME COLLEGE

REAR ADMIRAL FLOYD H. MILLER, USN (RET.)

REPLACEMENT TRAINING SHIP

I appreciate the opportunity to submit a supplemental statement to request the additional funds required to complete the training ship replacement project for New York Maritime College. $8.5 million has already been appropriated, $10 million more is required. If the additional funds are not appropriated either the conversion of the vessel selected can be partially accomplished only to wait for the additional funds required, or the vessel can remain laid up for at least an additional year until full funding is available. In either case, the Federal Government will continue to spend funds on the present outmoded training ship. This is obviously a poor application of limited resources.

For many years, Cadets at the State University of New York Maritime College have had to receive their sea training on a substandard and antiquated school ship. Partial funding to replace this dilapidated vessel already has been approved by Congress and the President twice.

In the FY 1984 Supplemental Appropriations Act (P.L. 98-396), Congress appropriated $8.5 million to purchase a new training ship for the college and for its preconversion costs. The Administration's FY 1986 budget deferred the $8.5 million. Congress disapproved the deferral and on August 15, 1985, President Reagan signed an Act disapproving a budget deferral request for this vessel, stating that these funds should be "obligated as soon as possible" (P.L. 98-88).

On February 5, 1986, the Administration transmitted its FY 1987 budget to Congress. The budget included a second deferral of the $8.5 million appropriated by Congress. On March 11, 1986, the Comptroller General held that the deferral was an impermissible reimpoundment and should be made available for obligation.

Three years after the original appropriation, the school still lacks a decent training ship.

Funding appropriated in FY 88 will assure the training ship is activated, converted and outfitted in a one-step program. This will preclude the alternative more lengthy and costly two-phase program. In a two-phase program, the ship would first be placed in existing class, in full repair; then the second step would convert and outfit the refurbished ship as a training ship. The cost and time of a one-step program are less than the sum of the cost and time for two steps.

The two step process necessitates laying up the vessel between shipyard availabilities and additional costs to tow the vessel to the lay up site and to the second shipyard. It is much more cost-efficient to do the conversion and repair in one shipyard under one contract. The Massachusetts Maritime Academy training ship PATRIOT STATE was converted using a two step process at two different shipyards on two different coasts (Pacific and Gulf). Costs were high, delivery was delayed, and administrative costs were driven up because two shipyards were involved. A two-step overhaul is simply not cost-effective. Since the end product is known, it should be contracted at the outset. The contract would depend on full funding.

The additional appropriation does not represent increased cost to the Government, but is more than existing funding. It is more economical than the piecewise approach and it is a reduction of current maintenance cost from the old vessel into the conversion of a new vessel. The old vessel has incurred over $12.6 million in maintenance costs over the past six years.

The 1988 maintenance and repair costs for the present ship are projected at $2 million to ensure minimum safety requirements as well as the required drydocking. After conversion, the new vessel will incur substantially reduced maintenance costs. Prompt action to repair and convert the new ship now will therefore save the Government millions of dollars while providing New York Maritime College with immediate training advantages. The new ship would meet the present critical needs of the College for an adequate and modern training vessel, would significantly improve safety, and would provide a troop carrying capability to the Navy's Ready Reserve Fleet.

New York Maritime College has an urgent and critical need to replace its present training ship EMPIRE STATE built thirty-five years ago. This was borne out by Admiral Harold E. Shear, the most recent Maritime Administrator, on 2 March 1983 at a Hearing before the House Subcommittee on Merchant Marine when he stated that "the training ships ought to be replaced."

This conversion is urgently needed so that the ship may be utilized for the 1988 Summer Sea Term (training cruise).

This Supplemental Appropriations request is based upon the following reasons:

I. Cost Savings to the Government

1. Prompt replacement of the existing training vessel will reduce overall maintenance costs. It is anticipated that this coming year $2 million will be spent on maintenance and repair of the existing vessel. During the last six years, over $12.6 million has been spent on EMPIRE STATE just to meet the minimum Federal safety requirements. This coming year (1988) the ship is scheduled for drydocking and the expensive removal and inspection of its propeller shaft.

1981	$ 408,000	
1982	2,799,000	(drydocking)
1983	2,022,000	
1984	4,058,000	(drydocking including removal of propeller shaft)
1985	2,051,000	
1986	1,311,000	(drydocking)
1987	Figures not yet available. Overhaul in progress.	
1988	Est. min. $2,000,000	(drydocking and propeller shaft work)

2. Prompt conversion of the new vessel will reduce custodial costs. If funds are not immediately available to convert the ship to a training ship, she must be placed in a lay-up caretaker status to await conversion.

She can either be placed alongside a pier where security, heat and lighting can be supplied or she can be secured for lay-up in the National Defense Reserve Fleet (NDRF). Lay-up alongside a berth would cost $30,000 a month. The preparation costs associated with lay-up in the NDRF would exceed $450,000. In either case, the unmanned inactive vessel will be subject to deterioration from natural elements and the resulting increased maintenance costs. Lay-up of the vessels in the NDRF subjects them to a high risk of vandalism and theft.

3. In a two-step overhaul, additional administrative costs are involved ranging from the requirement for two different bids/overhaul packages to double surveys of the vessel. In the two-step process, surveys would be required before each shipyard availability at a cost of approximately $100,000 each. Services must be provided at each yard and sea trials must be conducted upon completion of the overhaul. A one-step process would save approximately $300,000 in this regard.

4. In the two step process, the vessel must be towed to lay-up and then out of lay-up between two shipyards. Costs can run upwards of $25-30,000 per day. A long distance tow, if the shipyards are far apart, especially with a lay-up in between, could easily cost $200,000.

II. Training Requirements

1. The EMPIRE STATE was never properly converted to be a training ship and is thus less than adequate for training the Cadets in navigation, shiphandling and piloting.

2. Considering the cost of the four year academic program, it is deplorable that the Cadets are not getting the on-board training to operate and maintain the majority of modern United States Naval and Merchant ships in existence today because the EMPIRE STATE is obsolete as to electronics, main propulsion and auxiliary machinery. Only one other ship in the world has boilers similar to EMPIRE STATE. Representative Mario Biaggi on 28 September 1982 at a House Hearing for Authorization for Appropriations of Maritime Programs stated that "the condition of the federally provided training vessels that are being used to train prospective merchant marine and Naval Reserve officers at the State Maritime Academies is close to a national disgrace. They are old - devoid of spare parts - full of antiquated training equipment - and fuel-inefficient. These antiquated vessels are simply not capable of providing state-of-the-art training. They do not compare to the new and modern training vessels that are used by other maritime nations, particularly those of the Eastern bloc nations."

3. Many of the present ship's systems are sub-standard and inoperable. For example, the ventilating system is sub-standard and inadequate to meet habitability requirements and the air-conditioning system is inoperable.

4. The present EMPIRE STATE's performance is unreliable because the age of the systems makes them prone to failure at any time. Repair of the systems is also unreliable because the only previous source of readily

available replacement parts came from stripping the BAY STATE, sister ship of the EMPIRE STATE. The BAY STATE was placed out of service due to fire damage five years ago in her engine room which resulted in a tragic loss of life. She has lately been scrapped. The loss of the BAY STATE's parts as replacements requires purchase of newly manufactured parts at exorbitant costs with lengthy production times. This in turn results in delays causing the ship to be out of service, making it difficult to maintain training schedules for the Cadets and depriving the Cadets of the required training which they must have in order to qualify for the appropriate Federal Merchant Marine licenses.

5. Of all the maritime academies, only New York Maritime has an Electrical Engineering Degree program. New York's main laboratory (the training ship) is Direct Current (DC) yet Alternating Current (AC) is universal afloat and ashore throughout the world. Electrical Engineering students are being trained and educated on equipment that is no longer in use.

6. The new training ship will be equipped with modern type equipment, including main propulsion, electronic navigation and communication equipment, automation, AC electrical power generation and distribution, heating, ventilation, air-conditioning system and auxiliary machinery.

7. The new training ship will meet the highest merchant marine standards for habitability and will provide a reliable training facility capable of supporting the academic schedule in place of the EMPIRE STATE.

III. Safety

The conversion of the new training ship to a training vessel will add immeasurably to the safety of the Cadets by providing modern features such as up-to-date fire fighting systems, multiple egress from the engine room, modern internal communications systems, etc.

IV. Advantages to the Department of Defense

1. The new training ship can be rapidly converted into a troop transport. As an academy training vessel, the new vessel will be in ready and reliable operating condition and available in the event of an emergency and at a minimum cost to the Government. Within five day's notice, the ship could be deployed as a troop transport carrying approximately 1,000 troops and with more time the ship could be converted to carry a greater number of troops.

2. New York Maritime has an NROTC Unit and therefore is training midshipmen for the Navy on an obsolete ship. Only the New York and Maine Maritime Academies have NROTC Units. Eleven percent of New York students are in NROTC and go directly into the Navy. Additionally, other students (60%) are midshipmen in the U.S. Naval Reserve/Merchant Marine Reserve and can volunteer for active duty. They have an eight year Reserve commitement.

V. Quick and Cost-Effective Conversion

If the additional funds are appropriated for FY 1988, it is possible that the ship could be ready for the 1988 summer sea term provided New York Maritime is given decision-making authority for design and production in cooperation with the Maritime Administration. It can be done utilizing lessons learned from the recent Massachusetts Maritime Academy training ship conversion.

VI. Conclusion

It is the opinion of all the State Maritime Academy Superintendents, flag officers in the Maritime Service, two of whom are retired Naval Flag Officers with considerable ship experience, that these deplorable training ships, e.g. EMPIRE STATE, must be replaced as soon as possible.

The savings in a one-step process over a two-step process as described above not considering correction of deterioration during lay-up alongside a pier between overhauls would be between $3 and $4 million. Also, not considered is the aggrayation of dealing with two separate entities (shipyards, surveyors, etc.) attempting to complete the necessary project. See enclosed tabulation.

When the appropriation of sufficient acquisition and conversion funds is accomplished, it is then important to move quickly to convert the new ship to a training vessel. Prompt action to convert the vessel will save the government millions of dollars, provide required training facilities and a safer training vessel for the Cadets.

During the conversion process, ship sharing with another academy is out of the question; the training vessel is the College's main professional training laboratory. Additionally, safety considerations require Cadets to undergo vigorous and extensive indoctrination aboard the ship prior to the summer training cruise.

It is therefore requested that $10 million be appropriated to the Department of Transportation's Maritime Administration fiscal 1988 budget for the conversion of New York Maritime's new training vessel.

ADDITIONAL COSTS FOR TWO STEP PROCESS

Old Ship		New Ship	
1988 Overhaul and Drydocking	$2,000,000	Lay-up	$ 450,000*
		Administrative	300,000
		Survey	100,000
		Tow	200,000
			$1,050,000*

Total $3,050,000*

*Costs for berthing during lay-up not included

STATEMENT BY

THE PRESIDENTS AND SUPERINTENDENTS OF THE MARITIME ACADEMIES/COLLEGES

OF

CALIFORNIA, NEW YORK, MAINE, MASSACHUSETTS, THE GREAT LAKES REGION AND TEXAS

We, the Presidents and Superintendents of the State Maritime Academies/ Colleges of California, Maine, Massachusetts, The Great Lakes Region, New York and Texas, appreciate the opportunity to present our comments on the budget for maritime education and training proposed by the Maritime Administration of the Department of Transportation. We have deeply appreciated this Subcommittee's support in the past and solicit your support of Senate Bill S. 800 which continues support for the State Maritime Academy system. This is a companion to House Bill HR 953. Of deep concern is the total elimination of Federal support for the State Maritime Academies.

Specifically, we are seeking two actions through the Subcommittee.

1. Appropriation of $10 million as contained in Senate Authorization Bill S. 800 and House Authorization Bill HR 953. This will keep the State Maritime Academy system alive, and
2. We request that specific guidance be given to the Maritime Administration not to lay up and decommission our training ships after our 1987 training cruises.

Since 1874 we have been the backbone of recruiting, education and training personnel for the Maritime Industry, an industry necessary in peace and vital in war. We have also been responsible for training and educating a large number of officers for the Navy and Coast Guard, including a significant number of flag officers. We have been an integral part of the Maritime Industry in every national emergency since our existence. We consider our program very cost-effective in that the Federal Government, the respective State Governments and our Cadets (students) share in the costs.

It goes without saying that the attempts by the Administration and Office of Management and Budget (OMB) to shut the academies down have had an impact not only on our present students but our prospective students as well. The Administration's signal is the industry is dead. We believe this is not in our best national interest. If the State Maritime Academy system shuts down, not only will we be unavailable to meet peacetime requirements, we will not be available as an expansion base to meet merchant mariner training requirements in wartime.

Under the 1980 Federal Maritime Education and Training Act, the Federal Government provides the funding to the State Maritime Academies for:

1. A training ship plus ship's maintenance/repair and fuel when authorized (Great Lakes excluded) to allow our Cadets to meet the Federally mandated "sea time" license requirements.
2. $100K per school for administration of a State Nautical School.

3. Student Incentive Payments ($100/mo) for students accepting commissions in U.S. Naval Reserve/Merchant Marine Reserve.

The State Maritime Academies are also involved in continuing education in regard to the Industry. We have the potential to provide in addition to the Industry training already ongoing, the ability to educate and train U.S. Naval Reserve/Merchant Marine Reservists in Navy and Industry subjects. These are areas that don't necessarily fall under "state" functions but are more "Federal" in nature.

Of deep concern is the course that is being pursued by the present Administration, principally the Office of Management and Budget, toward total elimination of Federal support for the State Maritime Academies. This has been clearly evidenced in the President's Budget Proposal the last two years.

This year, the President's Budget contains no funds for the State Maritime Academies and the Maritime Administration (MarAd) has served notice in a recent letter to each of the State Academies operating training ships (all but Great Lakes) that the ships will be laid up and decommissioned upon completion of the 1987 training cruises.

Last year, the Administration tried a similar approach derived from that year's Budget Proposal when it gave the academies notice to cancel the Agreement as established by the 1980 Maritime Education and Training Act and predecessor acts, thus severing the State/Federal partnership which has been in existence since 1874. That action also in effect usurped Congressional prerogatives. The wisdom of the Congress prevailed and funding was restored at a level reduced by 24%. This reduction was not contested, being accepted as part of the burden of reducing the Federal deficit. In effect, we bore much more than our fair share of proportional reductions willingly.

The proposed termination of funding raises the specter not only of the closing of the academies, but also the loss of their National Security value to the Nation and the loss of their supply of skilled officers into the Maritime Industry and Armed Forces. The President cites an "oversupply" of graduates as the reasoning behind his Budget Proposal. It is difficult to conceive that the Administration wants to take this action on one hand, while on the other hand, the President himself in the January 1987 report entitled National Security Strategy of the United States specifically cites, "the lack of Merchant Mariners in the near term could impede our ability to adequately project and sustain forces by strategic sealift." The 1986 Navy Merchant Marine Manpower Study and relevant studies also find that the United States will be critically short of personnel to man just the Ready Reserve Fleet and U.S. Flag ships by 1992. This finding of a shortfall is made with the assumption that the State and Federal Maritime Academies will continue to produce the present annual output of licensed officers. It would seem the left hand doesn't know what the right hand is doing. The signals are very confusing.

It is important to note that the shortfall projected by the studies does not include manning the National Defense Reserve Fleet (NDRF), 80% of the Effective U.S. Controlled Shipping (EUSC) and economic shipping, that which transports strategic material. If these ships are included in the study of the manning problem, additional strain is quickly added to an already limited pool of active U.S. seafarers. We all agree it is sheer folly to rely on foreign seafarers to man EUSC ships in a national emergency.

Our students are getting jobs in the industry afloat, ashore and in the Navy, Coast Guard, etc. (See enclosure [1]). It should be noted that those of our 700 per year graduates who are not presently sailing are available to sail on their licenses for six years. There are at least 4,200 licensed mariners who can also sail in unlicensed positions available today for a national emergency as a result of our last six year's production.

Representative Walter B. Jones, D-NC, Chairman of the House Merchant Marine and Fisheries Committee, has recently stated, "Inadequate manning was the Achilles heel of emergency sea-lift. This Navy study proves it. We have an alarming situation and the government must now address the problem and be willing to come up with the funding necessary to implement solutions." The Chairman of the Joint Chiefs of Staff, Admiral William J. Crowe, Jr., has stated that the studies show that "all of them are coming to ..... an awareness that a Merchant Marine is more than a ship. It's the people to run them."

Given all of the above, the Administration, the Office of Management and Budget and the Maritime Administration yet remain unconvinced of the necessity for the State Maritime Academy system to continue.

We believe there is a clear statement of the need for trained Merchant Marine Officers now and not just in 1992 because only the graduates of today will be able to upgrade their licenses to meet the full spectrum of the industry's manpower requirements in the future. You don't stop training entry level officers just because you have enough Captains and Chief Engineers.

It is important to emphasize that every graduate of a State Maritime Academy has successfully completed the core of Naval Science courses required for commissioning in the Merchant Marine Reserve whether they have received the Incentive Payment or not. Thus the Federal Government through the State Academy system gets more than it pays for with Student Incentive Payments. In addition, today the State systems provide the most cost-effective way of obtaining the licensed officer with a Merchant Marine Reserve obligation. Our Cadets in the U.S. Naval Reserve/Merchant Marine Reserve Program pay more for the privilege of an eight year obligation than the Federal Government does. See enclosure (2) for recent cost comparisons. These costs are developed for 1985. The 1986 costs for the Federal Government are less because of a reduction in the 1986 Federal funding by 24%.

What is likely to happen if these programs are terminated? We believe the outcome is fairly predictable. With the termination of Student Incentive Payments, the students will immediately petition for the elimination of their obligation to take Naval Science courses and they will obviously not commit themselves for eight years of Reserve service. Succession to the U.S. Naval Reserve/Merchant Marine Reserve from its primary source will dry up. In addition, the quality graduates, about eleven percent, that go on active duty with the Navy will no longer do so. Today many flag officers in the Navy are graduates of the State Academies.

If the maintenance and support to the State Academies is terminated, the various states will simply reduce their appropriations to the Academies by $100,000 equal to the grant they will no longer receive. This, coupled with the removal of incentives for the students, will cause those State Academies without NROTC programs to revaluate the cost and utility of hosting the Navy program. Our continued relationship with the Navy would be in jeopardy and result in further estrangement between the Merchant Marine and the Navy. These perceptions of outcome are not threats or meant to be vindictive in nature and are certainly not scenarios desired by any of the schools, but rather we feel would be the natural result of the Federal Government's demonstrated lack of interest, need, support or appreciation of our programs. If you don't want us, then we will be leaving - a dangerous attitude with respect to national defense needs.

Just as it has been shown by the actions of our Nation's founding and successive legislators, it is our opinion the Federal Government has a significant stake in ensuring that there is an adequate level of education in Naval Science among operating officers of the Merchant Marine. This same partnership can produce Merchant Marine Reserve officers who are similiarly qualified and available to man the Ready Reserve Fleet (RRF), the National Defense Reserve Fleet (NDRF), the Effective U.S. Control (EUSC) ships, and to additionally provide necessary liaison officers and staff augmentees in time of mobilization. A system that does this with costs shared between the Federal Government, the State Governments and the students themselves, is the most cost-effective for all sectors. We hasten to point out that our State School students' cost share is the largest. State School students have historically paid their own monies by choice to secure a maritime career and will continue to do so given some meaningful evidence of Federal support.

Since 1874, you and the citizens you represent have built these unique maritime specialized institutions of public higher education. Their accomplishments are well known. More than any other tax-supported activity, education heralds the future. It is the foundation of progress and, in our case, can be the key to our industry's vitality. The money you direct to the Academies is not money spent and gone; it is money invested. It is a contribution to tomorrow, with rates of both material and intangible return no other instrument of public investment can approach.

We believe that the Congress should provide some adequate level of support to the most cost-effective way of achieving its national objectives. In terms of the Federal interest in the maritime education and training of licensed officers and Merchant Marine Reserve officers we think the criterion for determining cost-effectiveness is the Federal cost per licensed officer receiving an approved core of naval science education. We are confident that our programs justify Federal support measured against that criterion. They do so based on current cost.

The Maritime Administration's proposal, were it to stand, sounds the death knell for the State Maritime Academies. Our critical concern arises from the Maritime Administrator's recent letter to each of the State Academies operating training ships (all but Great Lakes) that the ships will be laid up and decommissioned upon completion of the 1987 training cruises.

Coast Guard regulations and international maritime agreements require at sea training as a basic merchant marine licensing requirement. This is the basis of our charge that the loss of training vessels effectively closes the State Maritime Academies.

The loss of these ships seriously threatens the schools' ability to sustain themselves as educational institutions in that the ships serve as the primary laboratories for obtaining real-world, real-time experience. These ships serve as training facilities in which the Cadets learn their trade, practice their respective engineering specialties, and develop their skills to the level of professional acceptance. To take the ships away from the schools is to deny them their primary classroom laboratory and training facilities and prevent the schools from awarding credit hours for shipboard training which is necessary for graduation and professional certification. These ships must be maintained at the respective academies or there is simply no reason to maintain the academies.

The Maritime Administrator's notice to recall the ships is difficult to comprehend in that it is based on the President's Budget proposal. It is not based on law as we read the Maritime Education and Training Act of 1980. Rather, this unilateral action on the part of the Administrator assumes no Congressional action on the Budget.

The Administration states that the increasing maintenance and repair costs of the five training ships and major costs of prospective replacements are not justified inclusions in the Federal Budget.

Most of our training ships are old and outmoded. The Cadets are being trained on equipment they will never see again. These ships for the most part were worn out Reserve Fleet ships that were turned over to the States and never properly converted to training ships. The oldest, assigned to California, was commissioned in 1939. All with the exception of the Massachusetts ship are DC instead of the universal AC power and are very cost ineffective in that parts are hard to find and must be specially ordered or built. The Maritime Administration has put little money into them over the years; as a result, habitability is substandard. Massachusetts' ship has recently been replaced with a more modern ship and a ship for New York is presently in the acquisition process. In both the case of Massachusetts and New York, little if any help was obtained from the Maritime Administration to replace the ships. It has only been through Congressional support that replacement has occurred.

It is a sad note that so many of the Third World countries today, i.e., Mexico, Indonesia, the Philippines, Taiwan, have relatively new training ships, ships that have been specifically configured for training, yet our Country continues to operate old outmoded vessels.

Despite the conditions of the training ships, the Maritime Administration will not propose a replacement ship program. Instead, the Maritime Administration has periodically proposed ship sharing between the various State Academies. They do so with no apparent related studies, with little discussion, and no cost and comparative analyses of the present system including replacements. In regard to ship sharing, on 8 February 1984 in a Hearing before the House Subcommittee on Merchant Marine, the then Maritime Administrator addressed ship sharing. The following is a direct quote: "First of all, let me say that the reviews which were conducted over a year ago about the possibility of consolidating have proven to be unrealistic and unfeasible, and I intend to keep a good training ship for each of the schools."

We, the Superintendents and Presidents of the State Maritime Academies, know the previous Administrator was correct but would welcome an objective review. Our major concerns relate to safety in that you simply cannot move college students from an ashore environment to a sea going environment in which they are the crew without having a ship available for familiarization and drills. In addition, MarAd's discussions on ship sharing leave little realistic time for ship maintenance. Crewing and related costs are equally unrealistic. The costs of maintaining the training ships have risen primarily due to years of neglect by MarAd. MarAd has annually funded only the bare minimum to meet Federal (U.S. Coast Guard) safety requirements. It should be noted that the training on these ships alone produces a supply of over 700 skilled officers per year. The total cost in 1986 for all five ships was $8 million out of a total Federal Budget for the State Academies of $12 million. The Fiscal Year 1987 Budget was approved at $9 million to include ship maintenance and repair, the $100,000 grant, Student Incentive Payments, etc.

In the absence of a ship replacement plan and in lieu of ship sharing, RAdm J. Ekelund, USN (Ret.) of California Maritime Academy has developed what we believe is a cost-effective plan that meets the needs of the State Maritime Academies and the Federal Government. This plan suits the smaller schools through use of ships in the RRF, thus ensuring that the smaller maritime academies can have replacement ships.

This proposal is based on the assumption that (a) a major concern of the Administration is the ultimate replacement cost of training ships, (b) the Federal Government can make a long-range commitment, (c) two agencies of the Federal Government can cooperate sufficiently, and (d) the U.S. Navy would agree to the conversion of some RRF ships in first class condition to training ships with the permanent loss of about 20% of their cargo carrying capacity and the substitution therefore of troop space for 300 to 400 men.

If these assumptions are valid, then it is possible, with an annual budget in FY 89 of $12M declining to a budget around FY 95 of about $7M and to a steady state budget in FY 98 of about $6.3M in constant dollars to replace the training ships from government-owned RRF assets and continue replacement ad infinitum and provide necessary funding to the State Maritime Academies.

The ship class looked at by California Maritime Academy was the ex-FREDERICK LYKES, a C-4. The conversion is essentially to #5 hold with two decks added above it. This conversion would cost about $10M and would provide galley, messing, berthing and sanitary facilities for 300, additional staterooms, expanded wardroom, sewage treatment, evaporator and air conditioning capacity, lifeboat additions and classroom space.

A major premise of the alternative is that the RRF ships are currently being maintained and outported at an annual cost of about $1.2M each. After conversion and while being operated as training ships, these same funds would be more than adequate for long-term maintenance. Indeed, savings may be achieved through the free outporting at the academy piers and the Cadet provided labor contributing to some ship maintenance.

Under these assumptions, the funding profile is shown in enclosure (3). The assumptions represent constant dollar values. Further, it is assumed that the New York ship replacement conversion will be done in FY 88 with funds already appropriated and using a government-owned hull.

This viable, cost-efficient concept has not met with any objections in the Navy, notably the Military Sealift Command. The details need to be worked out between the Maritime Administration and the Navy.

The training ships offer yet another advantage to the Federal Government within this cost. They are an available and ready surge trooplift capability that does not exist in adequate numbers elsewhere in our national ship inventory. The Administration does not recognize this fact and appears to be eager to strike them as navigable ships. We submit that such action is not in the national interest given our Nation's mobilization trooplift requirement. It is interesting to note that the Navy's Director of Strategic Sealift on 11 March 1986 before the House Subcommittee on Merchant Marine stated that the Navy has included the five State Maritime Academy training ships in the calculations of troop-carrying capability. Three of these ships are specifically so noted in the Navy's Merchant Marine Manpower Study. The Navy obviously needs them. Obviously in the present Administration, only the Congress can protect them.

In addition to allowing our Cadets to meet Federally mandated at sea requirements for a Federal Merchant Marine Officer's license, these training ships can presently be called upon on short notice. There are few ships to meet this national need other than the State Maritime Academy ships. These ships are strategically located around our national sea coast with free pier space and are not nested in a vulnerable Reserve Fleet mooring. They are being maintained cost-effectively by our students with the States sharing expenses. Our Cadets pay for the privilege of maintaining them. This partnership equation would appear to accommodate our Nation's budgetary problems today. What better deal could the taxpayers ask for! Loss of the ships at the Academies will not only impact on future officer training, the loss will also create an increase in necessary funds for maintenance and breakout of the present ships when they are subsequently retired to the Reserve Fleet. These ships are constantly being groomed at the campus piers now, hot iron, steam up, and ready to go.

The Navy has a mandated requirement for a sealift capability for 17,000 troops. The existing capability is far less than that. Why exacerbate this situation by decommissioning the State Maritime Academy training ships? The Academy Superintendents/Presidents urge continuation of the cost-saving concept of training ships programmed to meet this need on short notice. Thus under the State Maritime Academy system our country not only gets well qualified licensed officers but has ships that can readily be called up if the need arises.

We strongly recommend that training ships continue to be assigned to each of the State Academies and that a training ship replacement plan such as the one noted in enclosure (3) be studied and adopted.

The Maritime Administration and the Office of Management and Budget apparently believe that the Student Incentive Payments are to create Merchant Marine Officers only in times of shortage; with no shortage, they should be stopped, a foolhardy philosophy readily dispelled by the history book. The Incentive Payment is, however, tied to the U.S. Naval Reserve/Merchant Marine Reserve program. It provides the incentive for students to overload their academic program in order to take the required Naval Science core of courses and to commit themselves to subsequent training and an eight year obligation to their Nation.

It is also interesting to note that Section 1304 of Title XIII - Maritime Education and Training - only requires Naval Science training. It does, however, state that the purpose of the Act is to prepare individuals for service in the Merchant Marine of the United States. Naval Officer training is voluntary.

Although our Merchant Marine has been declining, the requirements for new officers is brighter now than it has been for years. Data from the Navy Merchant Marine Manpower Study points out that a significant number of seafarers are of age 59 or greater. Numerous retirements have been evidenced and more are imminent. It is not uncommon for our Placement Offices to receive telephone calls for senior positions they can't fill. Our afloat employment of the recent graduating classes is about 40% while about 22% are employed in the industry ashore and another 11% go on active duty in the Navy, Coast Guard, NOAA, etc. This amounts to about three-quarters of our graduates involved in the Industry or the uniformed services with prospects getting better.

This particular Administration is adamant about having the Federal Government remove itself from unnecessary or inappropriate endeavors and return functions to the States. But, does it make sense to remove small Federal support for this national program and terminate a true partnership with the States and the Cadets whose cost-share is significantly more than the Federal Government's?

The total number of graduates per year from the six state and regional academies is about 700. From among those graduates who accept Reserve commissions, approximately 100 volunteer for active duty in the Navy or Coast Guard. Each of these 100 accessions is achieved at a maximum total cost in Student Incentive Payments of approximately $4,500 over four years, a considerable savings to the Nation over any other source of mariners fully qualified for immediate sea duty and leadership roles. This is our Nation's most cost-effective commissioning source. For our island nation, so dependent upon the sea and world commerce, this is a very valuable contribution to our security. Our students pay tuition and fees for their education, including training cruises, naval science courses, and attend eleven month academic years which deprive them of the opportunity for summer employment. They earn Federal licenses along with their degrees while in a uniformed and disciplined environment. The respective states and industrial sources contribute the balance of academy expenses over tuition. The Federal Government's share, including student subsidies, ship maintenance and repair and fuel oil, is cost-effective.

This sharing of effort represents one of the best bargains available to the Government, and yet the Administration annually seeks to reduce the Maritime Education budget by not including support for the State Academies. This very small savings to the Federal Government imposes a severe training hardship on our institutions while reducing the incentive to develop an adequate Merchant Marine Reserve component of the U.S. Naval Reserve.

We submit that the continued existence of our State supported institutions assures the most economical, cost-effective method of producing Merchant Marine officers. We believe that our students return far more to the economy and the National defense needs of our Nation than they cost and that the survival of the State Maritime Academies is in the national interest. We have been tasked with this responsibility for 113 years.

The Maritime Administration's budget proposal, if accepted, undermines the very core of this long-standing, cost-effective, state/student/Federal relationship. It flys directly in the face of the Declaration of Policy in the 1936 Merchant Marine Act which declares that it is U.S. policy that we have a Merchant Marine capable of serving as a naval and military auxiliary in time of war or national emergency (our training ships) and that the Merchant Marine will be manned with a trained and efficient citizen personnel (our graduates).

The issues that we have described today are of extreme importance to our continued operation. The State Maritime Academies at minimal Federal cost have produced and continue to train outstanding officers for service in the Merchant Marine, the U.S. Navy and Coast Guard, NOAA and other service-related organizations. We have appreciated your past support and we trust that we may continue to earn your confidence and support in the future.

Again we solicit your support for Senate Bill S. 800. Passage of this Bill along with its companion Bill HR 953 in the House will ensure that the most cost-effective system of producing licensed Merchant Marine/Merchant Marine Reserve Officers will not be terminated.

The youth of our Nation need a clear signal that the Maritime Industry is not dead: They are willing and ready to go to sea. We earnestly request that the opportunity to do so through cost-effective education and training at State Maritime Academies and that this opportunity not be cut off. We also believe this system should not be terminated so that it may remain in place in the name of National Security as a necessary expansion base.

We would be pleased to assist you in any studies you may wish to undertake with regard to the issues that we have raised and would be happy to have the opportunity to discuss our situation with you and your staff at your convenience.

State Maritime Schools
Employment Data

	Afloat Employment (Includes deep sea and domestic shipping)	Maritime Related Ashore	Non-Maritime Ashore	Navy, Coast Guard	Other*	Total
Class of 1981	344(44.9%)	92(12.0%)	25(3.3%)	24(3.2%)	281(36.7%)	766
Class of 1982	190(26.9%)	85(12.0%)	50(7.1%)	16(2.3%)	365(51.7%)	706
Class of 1983	214(29.8%)	148(20.69%)	82(11.4%)	65(9.1%)	209(29.1%)	718
Class of 1984	246(37%)	135(21%)	74(10%)	60(9%)	159(23%)	674
Class of 1985	217(40.2%)	176(24%)	125(17%)	75(10%)	68(9%)	741
Class of 1986	277(39%)	151(22%)	132(19%)	77(11%)	65(9%)	702
K.P. Class of 1986	41(17%)	110(45%)	1(0%)	37(15%)	55(23%)	244

*Includes those attending graduate school, undecided and unemployed.

Source: State Maritime Schools and USMMA

ENCLOSURE (1)

FOUR YEAR COST PER STUDENT ENROLLED FOR A STUDENT GRADUATING IN 1985

	Total Number of Graduates	(a) SIP Student COSTS	(a) Non-SIP Student Costs	(b) State Costs	(c) Federal Cost Non-Sip Graduate	(d) Federal Cost SIP Graduate	
New York	229	$15,037	$19,837	$21,428	$12,864	$17,664	
Massachusetts	188	N/A	N/A	N/A	8,061	12,861	(no Training Ship in 1984 & 1985 thus no M&R costs)
Maine	145	20,868	25,668	20,489	14,225	19,025	
Texas	69	2,844	7,644	29,825	21,086	25,886	
California	112	10,771	15,571	29,467	12,220	17,020	
Great Lakes ***	46	10,520	14,120	6,677 (e)	2,095	5,696	

N/A Not currently available

(a) Includes cumulative tuition, room and board, uniforms, required fees. The figure is $4,800 less for individuals receiving SIP.
(b) Does not include capital improvement or construction.
(c) Includes cumulative ship M&R, ship fuel funding and $100,000 grant.
(d) Includes cumulative ship M&R, ship fuel funding and $100,000 grant and SIP.
(e) Three year average (1983, 1984, 1985)

*** Three year program. No federal cost for M&R or fuel.

ENCLOSURE (2)

FUNDING PROFILE (000)

	FY 88	FY 89	FY 90[3]	FY 91[4]	FY 92[5]	FY 93[6]	FY 94[7]	FY 95	FY 96	FY 97	FY 98[9]
Maintenance & Support	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600
Student Incentive Payments	1,936	1,936	1,936	1,936	1,936	1,936	1,936	1,936	1,936	1,936	1,936
Fuel	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100
Ship M&R	6,363	3,030[2]	3,030	2,030	2,030	1,230	1,230	600[8]	600[8]	300[8]	0
Conversion Fund	(1)	5,334	5,334	5,334	5,334	5,334	5,334	2,667	2,667	2,667	2,667
TOTAL	10,000	12,000	12,000	11,000	11,000	10,200	10,200	6,903	6,903	6,603	6,303

(1) New York replacement commences conversion with funds already appropriated.
(2) New York ship maintained hereafter from RRF maintenance and outporting funds.
(3) FY 90 allows second conversion for $10,668K.
(4) FY 91 second conversion maintained hereafter from RRF maintenance and outporting funds.
(5) FY 92 allows third conversion for $10,668K.
(6) FY 93 third conversion maintained hereafter from RRF maintenance and outporting funds.
(7) FY 94 allows fourth conversion for $10,668K.
(8) FY 95 through FY 97 M&R is for PATRIOT STATE.
(9) PATRIOT STATE replaced after 13 years in service and at age 40+.
Arrived at steady state condition with conversion possible every 4 years.
(10) Ten year cost is $96,809K or about current average annual cost with 34% savings thereafter.

ENCLOSURE (3)

FEDERAL TRADE COMMISSION

STATEMENT OF BRUCE A. SILVERGLADE, DIRECTOR OF LEGAL AFFAIRS, CENTER FOR SCIENCE IN THE PUBLIC INTEREST

Senator HOLLINGS. Mr. Silverglade? Welcome to the committee. Do you want to get rid of the Federal Trade Commission or beef it up?

Mr. SILVERGLADE. No; we would like to beef it up. We would like them to use their existing resources appropriately. We are a nonprofit public interest group. We have 80,000 members across the country that support us.

Although our name may not indicate it, one of our longstanding interests has been the regulation of deceptive advertising. The FTC has a small amount, $3 million in professional work-years, to regulate deceptive advertising. Advertising is an $8 billion a year industry. I read that 2 percent of our gross national product is just in advertising, of all things.

So in an area of limited resources, we want to make sure, I am sure, that the FTC uses that small amount as cost efficiently as possible, the $3 million it has, to regulate deceptive advertising.

Instead, what it has done under this administration is to really deregulate. I know you are concerned about excessive deregulation that hurts American business and American consumers, alike, and this is an example of that.

The Commission has down shifted and ignored deceptive advertising by the majority of the industry. Instead, it has focused on back-of-the-magazine-type ads, you know, small companies that engage in blatant fraud in little small ads in the back of the magazines and has squandered its limited resources on that type of regulation. While these companies, I am sure, like National Energy Associates, which makes something called a psychomatic energy control device, wheat germ oil producers and things of that sort. While these people certainly engage in deceptive advertising, they really represent a small threat to consumers, because they run a very small-scale operation.

We have petitioned the Commission over the last 3 or 4 years time and time again to refocus its efforts on major national deceptive advertising by McDonald's, Kraft Cheese, Campbells Soup, Coca-Cola, and other major companies.

Senator HOLLINGS. For example, what, I am curious, about Campbell's Soup?

Mr. SILVERGLADE. Campbell's Soup was making deceptive health and nutrition claims about its soup. It is saying, "Soup is good food" and said that it has more vitamins and minerals than other food. In fact, Campbell's is exceedingly salty. It contains an amount of sodium that is more than the minimum amount of sodium an American is supposed to get in an entire day, and yet had enough nerve to label their food as "health insurance" and "good food." We asked the FTC to investigate.

It refused. Fortunately, an attorney general of New York State threatened to sue Campbell's and obtained an agreement where they modified certain ads, modified certain ads entirely, and paid New York State $30,000 in civil costs.

This trend has spread. attorney generals in Colorado, California, and Texas, have taken up the regulation of deceptive national advertising.

We were happy with that trend, as the States are doing as much as they can with their limited resources. I think what is ironic about this is that the advertising community itself is now pleading with the FTC to pick up the reigns again. Editorials in Advertising Age—that is the leading industry magazine—have called for an active enough, vigilent enough FTC to arrest this disturbing drift toward piecemeal State-by-State regulation of national advertising.

Just 2 days ago, Ad Age ran another editorial where it pleaded with FTC Chairman Oliver for leadership so that companies can avoid state-by-state regulation. We have seen this in a number of areas, energy standards, product liability. Companies would rather have uniform national regulation, even a good amount of it rather than inconsistent State-by-State regulation.

I would urge you and this committee to really investigate how the Commission is using its limited funds in advertising. I think it would be an investigation supported not only by us but by the advertising industry itself.

Senator HOLLINGS. Very good, sir. I appreciate it.

[The prepared statement of Bruce A. Silverglade follows:]

PREPARED STATEMENT OF BRUCE A. SILVERGLADE

Director of Legal Affairs
Center for Science in the Public Interest

Good afternoon. I am Bruce Silverglade, legal director of the Center for Science in the Public Interest. The Center is a non-profit public interest organization. We are supported by approximately 80,000 individual members located across the country.

One of our long standing interests concerns the regulation of deceptive advertising and it is the Federal Trade Commission's handling of this matter that I wish to discuss today.

Mr. Chairman, in an era of limited resources, a regulatory agency must make doubly sure that its budget is being devoted to truly important tasks. Unfortunately, the FTC has ignored this simple rule and has squandered significant sums on trivial matters that produce relatively little public benefit.

I call your attention, Mr. Chairman, to Appendix C of the FTC's fiscal year 1988 budget submission entitled "Fiscal 1986 Accomplishments." On pages 7 to 9 of Appendix C, the Commission lists recent cases it has brought against deceptive advertisers. Many of the companies that have been targets of FTC action do not sound even vaguely familiar. For example, I do not believe any of us have even heard of companies such as National Energy Associates, manufacturer of the "Cyclematic" energy control device or Weidner Health and Fitness, manufacturer of "Dynamic Life Essence" nutrient supplements. The truth of the matter is that these types of companies are relatively small operations. While they have undoubtedly engaged in false advertising, they represent a rather small threat to consumers due to the relatively small scale of their businesses.

We have repeatedly petitioned the Commission to re-focus its efforts on deceptive advertising by much larger advertisers--including companies such as McDonald's, Kraft, Campbells Soup, Coca Cola, and numerous others. The Commission has refused to do so again and again. This does not mean that these major national advertisers were not engaging in deceptive advertising. In fact, each one of these companies was alleged to be engaging in deceptive practices by state attorneys general. Each of these companies' ad campaigns was either modified or discontinued, or the advertiser was required to disclose information necessary to dispel misleading impressions left by the ads.

One must ask then, why is the FTC insisting on using its precious resources to target small fry? Frankly, Mr. Chairman, I'm not sure. It appears that the Commission's rather odd enforcement record is a result of a deregulatory philosophy so extreme that it allows all but true charlatans to escape the grasp of the Commission's regulatory authority.

Whatever the cause, the result is certainly ironic--the agency that most prides itself on cost/benefit analysis is wasting its resources on matters of little significance.

I would add, Mr. Chairman, that consumer organizations are not the only ones upset about the Commission's skewed priorities in the area of advertising regulation. Surprisingly, the advertising industry itself has joined the call for a more active and relevant FTC.

It seems that advertisers fear a growing trend towards state-by-state regulation of national advertising that is occurring in the wake of the Commission's abandonment of its traditional regulatory role. Advertising Age, a leading industry trade magazine, has called on its editorial pages for a FTC "active enough, vigilant enough to arrest this disturbing drift towards piecemeal, crazy quilt, state by state regulation of national advertising."

The advertising community is also concerned about the effect that FTC inaction has had on the industry's self-regulatory programs. As you know, Mr. Chairman, the three major television networks operate standards and practices offices which, among other things, are responsible for weeding out misleading television commercials before they get on the air. Recently, these offices suffered severe cutbacks of up to 33%. One reason for these cutbacks is that top network officials no longer believe they need to spend money on preventing deceptive advertising since such measures are no longer a top federal priority.

Advertising industry executives however are concerned that the incidence of deceptive claims will surely rise. The American Association of Advertising Agencies has expressed its concerns over these cutbacks to the networks.

It is clear to almost everyone, except the FTC, that the advertising industry needs regulation. Consumers overwhelmingly believe so. According to a recent Roper poll 76% of Americans believe that the government should be making a greater effort to establish more controls on the way products and services can be advertised. Even the advertising industry realizes that more regulation is needed in order to preserve its legitimacy.

It takes great ingenuity for a federal agency to create a policy that pleases no one. But our hats are off to the FTC for creating this truly Rube Goldberg design.

Mr. Chairman, I urge this committee to investigate how the

Commission is spending its limited resources in this area--on behalf of consumers, on behalf of the advertising industry, on behalf of all of us who are concerned with proper fiscal management.

We anticipate that this Subcommittee will agree with us that the FTC should:

- Refocus its efforts on deceptive advertising by large, not small, companies;
- Reestablish a large enough presence in the field to provide an incentive for self-regulatory authorities to maintain their traditional efforts to regulate deceptive ads without federal involvement;
- Respond to the public's concern over the way that specific products can be advertised by issuing prospective guidelines in especially problematic areas such as children's advertising, alcoholic beverage advertising, food advertising, and drug advertising;
- Augment the Commissioner's scant resources by helping state governments to bring cases against misleading ads by large national advertisers.

I would like to thank you for this opportunity to testify and would be pleased to answer any questions.

Advertising Age, *May 11, 1987*

Viewpoint: Editorial

Big Mac case puts FTC on griddle

Who's calling the tune for the regulation of national advertising these days? Not, it would seem, the Federal Trade Commission, sitting in grand splendor on the Potomac.

The current imbroglio over McDonald's nutrition advertising is the latest evidence FTC is losing the initiative to the states. In this Big Mac attack, the attorneys general of New York, Texas and California have demanded McDonald's stop "misleading" ads or face prosecution under state laws. Without, apparently, bothering with even a courtesy call to FTC.

Similar ad challenges by Texas have hit Kraft Inc., for Cheez Whiz, and Colgate-Palmolive, for Dentagard. The McDonald's case is that company's second go-round with New York over nutrition disclosures in less than a year. None of these disputes was ever judged serious enough by FTC to merit a complaint. FTC has even criticized Texas' contention that a Cheez Whiz slogan, "Real cheese made easy," implied the product was 100% cheese. Small comfort for Kraft.

What the industry is witnessing is a tug-of-war over control of national ad regulation for the rest of the Reagan administration. Consumerists have found new champions in the states, aggressive Democrats like New York Attorney General Robert Abrams and Texas Attorney General Jim Mattox.

Before states seize more initiatives, FTC still has a chance to regain control of the situation. We're not looking for a repeat of those regulatory whirlwinds of the 1970s, but the commission must show the states it is conscientiously policing the national ad scene. It must also be ready to defend a national advertiser, in state court if necessary, when a state overreacts to an ad.

FTC Chairman Daniel Oliver, speaking to an ad industry audience in March, noted the perils of a single state erecting "a total barrier to commerce in the rest of the 49 states." He offered a solution: stronger leadership from the FTC.

If leadership is the answer, Chairman Oliver, then lead!

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF F. DANIEL BELL III, PRESIDENT, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

Senator HOLLINGS. Mr. Bell, you are not related to the one in Hartman?

Mr. BELL. I don't think so.

I certainly appreciate the opportunity to be here with you today, Senator. I am the securities commissioner for the State of North Carolina, and I currently serve as president of the Northern American Securities Administrators Association, which is commonly referred to as NASAA. We are the original NASAA, incidentally, and we found ourselves having to add a second A to our acronym to distinguished us.

NASAA is the association of the 65 State and provincial securities administrators from the United States, Canada, and Mexico whose charge is to administer and enforce the securities laws in our respective jurisdictions.

Although NASAA members are responsible for administering States securities laws and regulations, we are certainly interested in the promotion of investment protection at the Federal level. State securities officials work closely with the SEC and other Federal agencies responsible for regulating our capital market and, to a large extent, it is Federal-State efforts that compliment one another in achieving the maximum level of investment protection.

As you are well aware, the U.S. markets are known as perhaps the safest, fairest and most efficient capital markets in the United States. It is our goal to make sure that we retain that reputation in the world arena.

Senator HOLLINGS. Do they have as much securities fraud as we have got going on, say, in London?

Mr. BELL. I would say they have their fair share of it. I am not so confident that in London, for example, that as much has been uncovered as in the United States as of late, but I think our organization believes that a lot of this was going on prior to recent revelations in the United States.

It is a matter of being able to investigate and detect, and it is out of that concern that I appear here. The SEC has had a very nominal, if any, budget growth in recent years. Their current staff is less than the staffing that they had in 1962. There is, in our view, many areas that could be more effectively regulated, a lot more policing that could be done on the Federal level than the SEC has just been capable of doing.

They have submitted, much to our pleasure, a request for a budget increase for fiscal year 1988. We are here to speak in support of that request.

Senator HOLLINGS. And they got the money. They are charging the lawyers or the corporations for it. We turned back money to the General Fund from the SEC. So I obect to charging it and then just running the Government on SEC funds. We do it with the Patent Office the same way. So we have got the money in there, and they need the increase, so we will see what we can do on that. We appreciate your appearance here today.

Mr. BELL. Thank you very much.

Senator HOLLINGS. You are out of Raleigh?

Mr. BELL. Raleigh, NC.

Senator HOLLINGS. Good enough.

[The prepared statement of F. Daniel Bell, III follows:]

North American Securities Administrators Association, Inc.

Statement of F. Daniel Bell, III

President,
North American Securities Administrators Association

Mr. Chairman and Members of the Subcommittee:

I am Dan Bell, Securities Commissioner for the State of North Carolina and president of the North American Securities Administrators Association (NASAA). NASAA is the association of the 65 state and provincial securities administrators from the United States, Canada and Mexico, whose charge is to administer and enforce securities laws in their jurisdictions. By policing securities offerings, coordinating state and regional enforcement efforts, and promoting investor education, NASAA helps protect the integrity and efficiency of the capital markets. I appreciate the opportunity to appear before the Subcommittee today to discuss the fiscal 1988 Securities and Exchange Commission (SEC) budget request.

Although NASAA members are responsible for administering state securities laws and regulations, we are also interested in the promotion of investor protection at the federal level. State securities officials work closely with the SEC and other federal agencies responsible for regulating the capital markets. To a large extent, state-federal efforts compliment one another.

U.S. securities markets are widely viewed as the safest, fairest and most efficient capital markets in the world. Our capital markets have facilitated the extraordinary economic growth experienced in this country. Since 1934, the SEC has played a critical role in protecting investors and maintaining confidence in our markets. Investor confidence benefits the securities industry and entrepreneurs who seek to raise capital for business ventures. Most importantly, effective securities regulation promotes economic growth by protecting access to investment funds by honest, productive businesses.

During recent years, our financial markets have grown dramatically in size and complexity. Trading on the exchanges and the over-the-counter market has reached record levels. Since 1980, the volume of shares traded on the New York Stock Exchange has tripled. Growth in the over-the-counter market increased by 500 percent. From fiscal 1981 to 1985, the market value of stocks traded on the exchanges almost doubled, from $564 billion to $1.1 trillion. The number of registered broker-dealers increased 80% during the past six years and the number of investment companies grew 60%.

The number of Americans looking for investments has risen. The range and diversity of investment instruments has grown as well, just as the federal deregulatory wave hit high tide. The weakening of investor protection safeguards has not gone unnoticed by the scam peddlers and market manipulators. Some seem to have concluded that "deregulation" means "anything goes." For too many market players today, the expected benefits of violating the securities laws appear to have outweighed the potential costs of getting caught.

The securities industry has experienced explosive growth, but the SEC now has fewer staff than in 1962. The ability of the Commission to carry out its important investor protection mission is threatened. Many observers have expressed concern that the inability of the SEC to keep up with the industry growth means that more securities laws violations go undetected, fewer filings are reviewed and fewer crooks are caught. A Washington Post headline asks: "Is the SEC Big Enough for the Job?" The Wall Street Journal proclaims that "Busy SEC Must Let Many Cases, Filings Go Uninvestigated." The former president of NASAA told Congress last year that "the truth is that the level of securities enforcement is so low that more and more shady and fraudulent deals are worth the risk for unscrupulous salesmen." A sitting SEC Commissioner, referring to the inability of the SEC to keep up with the expansion in the marketplace, told the Wall Street Journal that "Word gets out on the Street: if you limit your greed to a $1 million Ponzi scheme, you aren't going to get any flak from the SEC."

Members of our Association are located in all 50 states. We work with investors in every local securities market in the nation. From Fort Lauderdale to Salt Lake City and from Wall Street to Spokane, we see the real world of today's securities markets. And we're concerned. Investor complaints are up and in our view, public confidence in the integrity of the markets has been jeopardized by recent events. Although the statistics are difficult to come by, the states have experienced a tremendous upsurge in activity of the unlicensed, unregistered, con men operations.

We are delighted, therefore, to see that tougher regulatory enforcement at the federal level is suddenly back in vogue. It is unfortunate, however, that it took marketplace abuses and an astounding level of fraud to convince some public officials that a laissez-faire approach cannot work in an industry based on trust.

Fortunately, despite the lack of resources, the SEC has a dedicated staff of professionals that have long been an example of outstanding public service, and I would like to applaud them for their efforts and hard work. However, while the Commission has achieved impressive productivity gains, it cannot, and will not, squeeze more out of its able staff indefinitely. The additional resources that Chairman Shad has requested for his agency are desperately needed and long overdue.

For several years now, NASAA has told anyone who would listen, including congressional committees, the media, and others, that the SEC's budget is simply inadequate to police a marketplace which has grown exponentially in the last several years. We are not unaware of the budgetary restraints upon the entire federal government. However, it is our opinion that the changes in the marketplace, including increasing complexity, increasing fraudulent activity and sheer volume clearly demonstrates that the SEC is desperately in need of more resources. It is our understanding that the budget increase will provide for additional regional office staff. As state securities regulators, we look forward to increased regional staff in New York, Denver, and Miami. Increasing the SEC's enforcement staff can only be viewed as a positive step in the right direction. We respectfully urge Congress to approve this modest budget increase.

UNITED STATES INFORMATION AGENCY

STATEMENT OF DR. ALLEN H. KASSOF, EXECUTIVE DIRECTOR, INTERNATIONAL RESEARCH AND EXCHANGE BOARD

Senator HOLLINGS. Dr. Kassof, please proceed.

Dr. KASSOF. Thank you, Senator. I am happy to be here. I am representing the liaison group for International Educational Exchange. That is a group of 22 nonprofit organizations that run America's principal overseas academic exchanges.

Senator HOLLINGS. How many students do you have and what is the budget?

Dr. KASSOF. The collective organizations have separate budgets. At my own organization, the International Research and Exchanges Board, we have a budget of about $5 million a year, and we exchange and move about 1,000 people a year back and forth between the United States and Eastern Europe and the Soviet Union.

Senator HOLLINGS. Senator Bumpers and I have a very dim view of this so-called—what do you call that thing—the National Endowment for Democracy. We figured with $30 million or whatever they are spending that we could get a beefed up student exchange program. It would do a lot more for democracy and the future.

So we think it is a way better investment in the markets, and we are paying chambers of commerce and labor organizations to meet and eat and run all around the world.

I would rather get the money to you, is the reason I ask.

Dr. KASSOF. OK.

Senator HOLLINGS. We will have another amendment again this year. We are edging up on them.

Dr. KASSOF. I have submitted some recent testimony. I trust someone will read it.

Senator HOLLINGS. How many students would you have coming out of Nicaragua to the United States, any at all?

Dr. KASSOF. I can't answer that question for the liaison group, I am afraid, Senator, since my specialty is Eastern Europe and the Soviet Union. But we would be happy to get the figures for you.

Mr. PETERSON. My name is Norm Peterson, I am the staff director for the liaison group. I am with Dr. Kassof I could venture a little answer for that, Senator. USIA has one program that I know of that does include some students from Nicaragua as their campus program.

Senator HOLLINGS. Great.

Mr. PETERSON. Under that program, that is an undergraduate program, they did bring two or three students from Nicaragua in on a pilot basis. I think one of them turned around and went home, but there are a couple that are here in the United States.

Senator HOLLINGS. How about Panama?

Mr. PETERSON. Substantial numbers from Panama, but the biggest number is our AID Program. I think that that probably is 500 or 600 people.

Senator HOLLINGS. That is more than what we had before. It used to be around 268, where 3,000 were going to Patrice Lamumba and the University of Moscow.

Mr. PETERSON. I think you will see a table in our testimony that gives some interesting comparisons for a few countries.

Senator HOLLINGS. Very good, Dr. Kassof. I didn't mean to interrupt.

Dr. KASSOF. No; not at all. Let me address the question that I think an appropriations subcommittee has to ask, namely, what is it getting for its money when it spends it here? I would like to say a couple of words in the minutes available to me from my own experience, which really has to do with the exchanges between Eastern Europe and the Soviet Union that are administered by International Research and Exchanges Board, where I am the director.

Within the last year, we have now begun to see some very important changes beginning to take place in the Soviet Union under Gorbachev, and for better or worse, they are going to have an impact on us.

Senator HOLLINGS. For instance, what?

Dr. KASSOF. There is very major change in the Soviet approach to foreign policy, for example, in the way they publicize its position.

Senator HOLLINGS. What about the students? Is there anything about the exchange program that you have noticed different?

Dr. KASSOF. The Soviets are beginning to pick up a little bit and to create some possibilities that were not there before. I am not sure we are going to be up to those for our budget point of view, but what is important so far, I think, is that although we can't predict the future of those changes in the Soviet Union, we have an amazingly good comprehension of the context in which they are taking place.

We have now alumni of those programs going back 30 years on the American side, hundreds and hundreds of them, who have lived in the Soviet Union, who have been on the ground. We know that landscape very well. We know people who are producing the ideas that are going to shape the future force of Soviet society.

So on the outbound side of the exchange, I think we have had a very substantial return on our investment. These people are not only throughout the university system; they are here on the Hill; they are in government agencies. They are really to be found out anywhere unions involving Soviets affairs is found.

On an incoming side of the exchange, there is an equally interesting, I would say, dramatic return. I don't know whether you are aware that Alexandri Yakaviv, who is now one of Gorbachev's closest advisors, a member of the Politburo, is a member of these exchanges.

He spent a year at Columbia University in 1959 as a historian.

Senator HOLLINGS. Does he indicate he remembers anything about that exchange?

Dr. KASSOF. What is interesting that you could never predict, of course, is whether Yakaviv or other exchange members who are going to follow him to high places will be friendly or not, but you can be absolutely sure that they have a sober and rational understanding of this country, which is something that could not have been said of earlier Politburo members.

We have got really a plus there, I think, which is a very important return on our investment. We are going to be seeing more of these people.

Then there is, apart from the bilateral question of Soviet-American relations, there is a new Soviet cultural offensive which ought to make us more sensitive to what we are doing and what we are able to do in other parts of the world.

I think there is something new going on there. The Soviets always have been very good at packaging outreach, bringing people into the Soviet Union; paying for students and so forth.

What is new now is that while before what was in that package was not very appealing, it is beginning to look more appealing to some people. So you have a powerful new challenge coming from the Soviet Union extending all the way from Western Europe throughout the Third World, and we are going to have to be up to that competition in terms of extending our own influence, displaying the strength and originality and vitality of our own institutions to people around the world.

We can do it; we certainly have the institutional resources in this country. There is no question about it. What we don't always have is what I would call the element to get people back and forth to connect those institutions here and overseas.

That is really where the Federal Government comes in. It is an awful time to cut the exchange budgets. It is precisely the wrong time. Anything this subcommittee can do to get the USIA budget back in title VIII, I think, will perform good services.

[The prepared statement of Allen H. Kassof follows:]

the LIAISON
GROUP for International Educational Exchange

STATEMENT OF

DR. ALLEN H. KASSOF, EXECUTIVE DIRECTOR
INTERNATIONAL RESEARCH AND EXCHANGES BOARD (IREX)

REPRESENTING THE
LIAISON GROUP FOR INTERNATIONAL EDUCATIONAL EXCHANGE

The Liaison Group, a coalition of the executive leadership of twenty-two major nonprofit organizations dedicated to international educational exchanges, is gravely concerned about the future of the Fulbright Program and other vital federal international educational exchange programs. We are grateful to the Subcommittee for this opportunity to present our concerns and recommendations to you.

It is now clear that the congressional budget resolution will once again call for deep funding cuts in international affairs activities. We recognize and appreciate the dilemmas and painful decisions this poses for the Subcommittee as you prepare to make appropriations recommendations for international programs within your jurisdiction.

We come before you with a simple message — preserve and protect the vital international educational exchange programs administered by the Department of State and the U.S. Information Agency. Some policy makers might be tempted to think that international educational exchanges are pleasant programs that deserve to be funded when times are good and money plentiful but are expendable when times are lean and fiscal belts must be tightened. Such a view greatly underestimates the increasing impact of international educational exchanges on our national security, our economic well-being, and our future place in the world.

During the 1980's, Congress has led an effort to strengthen international exchanges. Aware of their growing importance and the deplorable state of federal programs, in 1982 Congress directed the administration to double USIA exchange programs over a four-year period. At that time, Congress identified several fundamentally important issues:

> The Congress finds that:
>
> (1) United States Government sponsorship of international exchange-of-persons activities has, during the post-war era, contributed significantly to United States national security interests;
>
> (2) during the 1970's, while United States programs declined dramatically, Soviet exchange-of-persons activities increased steadily in pace with the Soviet military buildup;
>
> (3) as a consequence of these two trends, Soviet exchange-of-persons programs now far exceed those sponsored by the United States Government and thereby provide the Soviet Union an important means of extending its worldwide influence. . . .
>
> P.L. 97-241, Sec. 305(a)

If we examine these two trends today, we find that the situation remains much as it was in 1982. Although U.S. Government programs have been significantly strengthened, thanks in large measure to the support of this Subcommittee, Soviet scholarship programs have continued to expand at an even faster rate. The General Accounting Office estimates that 83,500 foreign students were studying in the U.S.S.R. and Eastern Europe on government scholarships in 1982. By 1984, according to State Department data reported last May, this number had increased by nearly 10,000 to almost 93,000. (Both figures do not include the large number of students from developing nations studying in Cuba.)

How do U.S. programs compare? In 1984 approximately 13,500 students were studying on our campuses under U.S. government sponsorship. Through AID and USIA initiatives this figure will approach 20,000 this year, still far short of either the size or rate of growth of Soviet programs. If one compares Soviet bloc versus U.S. scholarships in certain key countries, the growing disparity between our programs becomes alarmingly clear. In Costa Rica, for example, the Soviet bloc supplied 1,635 scholarships in 1985 compared with 43 offered by the United States.

Of course, in addition to the carefully selected, high-caliber students receiving U.S. scholarships, there are more than 300,000 foreign students enrolled in our colleges and universities who do not receive primary support from the U.S. Government. This large group of 'self-sponsored' students offer very important public diplomacy opportunities to the United States. Even if one considers both self-sponsored and government-sponsored students, however, crucial U.S. interests are not currently met in many vital nations. This is clear from the following table, comparing the total number of students from selected nations in Soviet bloc institutions with the total number in U.S. institutions (both U.S. Government-sponsored and those sponsored by other sources) during the 1984/85 academic year.

Country	Students in U.S.S.R./E. Europe	Total Students in U.S.
Costa Rica	1,580	567
Dominican Republic	1,045	590
Greece	4,600	4,163
Jordan	9,365	5,774
Morocco	1,110	659
Senegal	395	152
Sudan	2,160	589
Togo	430	45
Tunisia	830	551
Zambia	875	382

The Soviet Union is by no means the only major nation interested in scoring public diplomacy victories with educational scholarships. For example, the Japanese have recently embarked on an extremely ambitious program to increase enrollments of foreign students. Prime Minister Nakasone has directed government agencies to implement programs to bring ten times as many foreign students to Japanese institutions.

As these statistics graphically reveal, now is not the time to decrease our efforts. We need to offer more, not fewer, scholarships to future leaders of other nations.

Unfortunately, recent changes in U.S. tax law regarding scholarships and fellowships have made many Fulbright and other U.S. Government awards taxable for the first time, putting major new fiscal strains on these programs. This problem has been exacerbated by other recent changes in tax law which make awards to foreign recipients taxable at a much higher rate than those to American recipients. In many cases, foreign Fulbrighters are now liable to 30% withholding and taxation on their modest awards.

To illustrate the costly impact of these tax changes on exchange programs, consider the following comparison. A foreign Fulbright scholar who is married with one child and who receives a $20,000 award to come to the United States to conduct research as a non-degree candidate will owe taxes in excess of $5,000 on his or her award. An American scholar with the same number of dependents receiving the same award will owe less than $1,000. Foreign recipients of U.S. Government awards cannot be expected to absorb such high tax bills within their modest awards.

This means that even if appropriations for USIA programs are maintained at present levels, fewer awards can be given. If the level of appropriations also goes down, the number of U.S. scholarships will necessarily plummet.

Developing close ties with the future leaders of other nations through educational programs in the U.S. is not the only, and perhaps not even the most important, way international exchanges contribute to our national interests. Educational exchange programs are also our primary means of gaining direct, in-depth knowledge of other nations and cultures.

This is most convincingly evident in relation to the area of my own specific expertise — the Soviet Union and Eastern Europe. The recent dramatic changes in the Soviet Union have centered, significantly, on questions of culture and information. That is, both Soviet domestic and international politics have become inseparably intertwined, as never before, with the realm of ideas, and with the role of idea-makers. Gorbachev's efforts to enlist the support of intellectuals, and through them, to reach public opinion at home and abroad, illustrate again why it is so important for American analysts to have a firm and expert grasp of Soviet cultural and intellectual, as well as political, life. Indeed, one of the great achievements of thirty years of exchanges with the Soviets is that we do have many specialists who have spent time on the ground in the Soviet Union and who are intimately familiar with the stage and the players in the present political drama that is unfolding. While the speed of the present Gorbachev campaign may have come as a surprise, there are very few mysteries about its terrain; and for this, we can thank exchanges for giving

Americans the kind of wisdom and knowledge that only first-hand experience can provide.

The development of American knowledge of other nations is not merely important to us in relation to foreign policy. It is equally important to the United States in meeting the challenges of economic "competitiveness" as we attempt to rectify our huge international trade imbalance. In this regard, it is widely recognized that the United States business community does not sufficiently understand either foreign markets or our major international economic competitors. We are still, as Mark Twain dubbed us more than a century ago, 'the Innocents Abroad'. As a nation, we are not currently equipped to compete effectively in the highly competitive global economy which has emerged in the 1980's. We cannot produce U.S. products for export or market them abroad unless we understand the needs, tastes, and consumption patterns of other peoples. In addition, we cannot expect to be successful if we do not understand foreign commercial practices and governmental policies relating to commerce.

This fact is acknowledged in virtually every major piece of trade legislation now pending in Congress. Almost every one includes provisions to expand foreign language and international studies programs. These proposals to internationalize the curriculum of our educational institutions deserve support. However, the best approach to increasing our knowledge base of other nations is found in our existing international exchange programs which provide direct, first-hand experience of other cultures and their languages. This direct exposure simply cannot be duplicated in the American classroom. Thus, once again, international exchange programs are not merely nice. They are increasingly essential to our national security and have major implications for our domestic well-being.

Aware as we are of the very difficult problems facing the Subcommittee in providing adequate funding to the international programs under your jurisdiction, we urge you to:

o Fund USIA's Educational and Cultural Exchange programs at the level requested by the administration, or at least the level of the 1987 appropriation.

o Provide specific support at requested levels for two crucial exchange programs funded out of USIA's Salaries and Expenses Account, the International Youth Exchange Program and the Division of Student Support Services. The

Subcommittee last year included language in its report on the FY87 appropriation emphasizing the vital role played by the Division in bringing self-sponsored foreign students to the U.S. and enriching their programs of study. This support was much appreciated by the Liaison Group and we hope you will again call for continued funding of these crucial programs.

o Fully fund the Department of State's Soviet and Eastern European Research and Training Program.

Once again, thank you for the opportunity to present this information and these recommendations to the Subcommittee. My colleagues in the Liaison Group are very grateful to the members of the Subcommittee for the crucial support you have provided for international educational exchange programs.

AHK/NP/bos

Senator HOLLINGS. Very good, sir. We appreciate both your appearances here today.

In addition to the statements that were heard today, the subcommittee has received statements from the following: Charles N. Quigley on behalf of the Center for Civil Education; National Association of Regulatory Utility Commissioners; Society of American Florists; Richard E. Gutting on behalf of the National Fisheries Institute, Inc., Kevin Berrill on behalf of the National Gay and Lesbian Task Force; the National Network for Victims of Sexual Assault; Paul Bogart and James N. Barnes on behalf of the Antarctica Project and Greenpeace; Ronald Kokinda on behalf of the National Democratic Policy Committee; the American Association of Nurserymen; the California Raisin Advisory Board; the California-Arizona Citrus League.

These statements will be printed in the hearing record.

The clerk is directed to include in our record any additional statements received subsequent to this hearing.

ADDITIONAL STATEMENTS

[CLERK'S NOTE: Pursuant to the direction of the chairman, the following additional statements have been printed in the record.]

[The statements follow:]

National Bicentennial Competition on the Constitution and Bill of Rights

WRITTEN STATEMENT OF CHARLES N. QUIGLEY
ON BEHALF OF THE CENTER FOR CIVIC EDUCATION
In Support of the
NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND BILL OF RIGHTS

This month marks the 200th anniversary of the convening of the Constitutional Convention in Philadelphia and the 199th anniversary of South Carolina's ratification, an auspicious time for the Committee to consider proper commemoration of the bicentennial of the United States Constitution. I appreciate the opportunity to submit this statement in support of the National Bicentennial Competition on the Constitution and Bill of Rights and to provide you with a report of our progress and program for involving elementary and secondary school students in each congressional district and State in celebrating this bicentennial by learning more about our Constitution and discovering how to apply our governing principles.

This year following the leadership of Chairman Hollings, Senator Rudman and Chairman Stennis, Congress saw fit to provide $2.7 million to the Commission on the Bicentennial of the United States Constitution to provide federal assistance to the National Bicentennial Competition developed and administered by the Center for Civic Education. The Committee added to the Administration's bicentennial request in order to provide funding for educational programs as authorized in the first session of the 99th Congress with the passage of title V of the Arts, Humanities, and Museum Amendments of 1985, Pub. L. No. 99-194. As enacted, the Continuing Resolution for this year provides significant supplemental funding for the Commission on the Bicentennial for education programs "including $2,700,000 for implementation of the National Bicentennial Competition on the Constitution and Bill of Rights." 100 Stat. 1783-65.

On November 21, 1986, the Commission awarded the National Bicentennial Competition grant. This grant to the Center for Civic Education has enabled the planning and organization required for nationwide implementation of the program during the 1987-88 academic year. A number of Members of both the Senate and House and educational, public, and private sector organizations have also become involved in the program over the past several months. We are grateful for this support, fully aware of the responsibility it entails and enthusiastic about the prospects and progress of the program.

We Americans have deep feelings of respect for our Constitution and for other symbols of our free society such as the Declaration of Independence, the flag and the Statute of Liberty. The Constitution, however, is more. Its fragile parchment amounts to more than any monument -- our strength as a free society derives from its governing principles. While we may venerate this document, all too many of us do not comprehend its provisions, principles and values. A recent survey conducted by Research & Forecasts, Inc., on behalf of The Hearst Corporation reinforces this shortcoming. Only a slight majority of those Americans surveyed identified the original purpose of the Constitution to create a federal government and define its powers. Almost 48 percent of those surveyed did not know its purpose or believed the Constitution was intended to create the 13 original States, to declare independence from England or to make George Washington the President. Nearly one-third of those surveyed thought that the President could adjourn Congress when he saw fit and fully 60 percent believe that the President, acting alone, appointed Justices to the Supreme Court, without the necessity for advice and consent in the confirmation process. These results are alarmingly similar to those over the last two decades when Americans, presented with a contemporary language version of the Bill of Rights, thought it a Communist document and when half of students surveyed thought that the President could appoint the Members of Congress.

The forthcoming bicentennial of the Constitution and Bill of Rights provides a unique opportunity to correct this misunderstanding and revitalize interest among young people in the fundamental principles, values and institutions of our constitutional democracy. Let us recall James Madison's insight: "What spectacle can be more edifying or more seasonable, than that of liberty and learning each leaning on each other for mutual and surest support."

The Center for Civic Education is presently completing the development of the National Bicentennial Competition and preparing to launch its national implementation with the support of the Commission on the Bicentennial. In the fall of 1987, secondary schools throughout the Nation will have available to them a specially designed six-week program prepared to further students' understanding of the Constitution and Bill of Rights. Following their curricular study, classes will be able to continue in the program through either a competitive or participatory alternative. Classes of students in the competitive program work together as teams taking written and oral examinations to determine the winning classes at congressional district, State and national levels of competition. Students choosing the participating program will receive a certificate of merit once they attain a satisfactory level of achievement in their studies.

At last year's hearing I stated to you that we hoped to field test the project in approximately 20 to 30 congressional districts. Interest and enthusiasm far exceeded our expectations. Field testing has reached 46 congressional districts in 22 States, involved over 250 teachers and over 11,000 students.

With the continuing support of the Congress, the Commission and our numerous public and private partners, the Center for Civic Education is presently organizing to implement the National Bicentennial Competition nationwide. At this moment 247 Members of the House and 50 Senators are involved in the program. Coordinators have been selected and trained for each of the 50 States and five trust territories. Congressional district coordinators have been identified and will be trained by this month. The American Association of School Administrators, American Civil Liberties Union, American Federation of Teachers, Council on American Private Education, Council for the Greater City Schools, Council of Chief State School Officers, League of Women Voters, National Education Association, National School Boards Association, Social Studies Supervisors Association and other have all lent support and assistance. Our goal remains to provide opportunities to participate in all 435 congressional districts and the trust territories, in over 4,400 classrooms for over 325,000 students in the first year of implementation beginning this fall. The program has the capacity to involve every secondary school student in public and private schools in the Nation and we are developing similar programs for upper elementary and junior high school students. The Commission sees the potential over time to involve 10 million students.

Our annual budget requires a total annual commitment of approximately $25 million for nationwide implementation, but only $2.7 million was requested this year in direct federal financial assistance. The bulk of the program's costs are being provided from public and private sources at the State and local levels. By funding this type of bicentennial activity, the Committee is playing a catalytic role in bringing programs to students that can make this bicentennial period meaningful and its impact lasting. Jefferson warned "if you expect a nation to be ignorant and free, you expect what never was and never will be." We are striving to revitalize Constitution-related school study and protect against the threat of ignorance among our youth of fundamental constitutional principles.

We appreciate the support and confidence shown by the Commission and by the President and their including in the Administration's fiscal year 1988 budget continued funding for the National Bicentennial Competition on the Constitution and Bill of Rights. Executive Office of the President, Office of Management and Budget, Budget of the United States Government--Fiscal Year 1988, Appendix I-Z39. With a follow-up fiscal year 1988 appropriation of $2.85 million, well within the amount requested by the Administration, the program will receive sufficient federal assistance to implement the nationwide program and develop the elementary and junior high school components of the program this coming fiscal year. In addition, we would support the fullest possible funding of the remaining $2.15 million of the Commission's annual authorization for educational programming in order for it to be able to provide assistance to other qualified groups and organizations working to improve constitutional education in the schools.

We appreciate all that the Chairmen and this Committee have done for the National Bicentennial Competition and know that you look forward to its successful implementation. The Congress has provided us with a precious opportunity. We are aware of the responsibilities that accompany this public trust and are dedicated to their exemplary fulfillment. Our experience in developing programs on the Constitution and Bill of Rights for elementary and secondary schools over the past 22 years and, in particular, our experience in the development and field testing of this program convince us of its potential for engendering an understanding that will foster among our youth a reasoned commitment to constitutional principles and values and to the preservation and improvement of our free society.

National Bicentennial Competition on the Constitution and Bill of Rights

A project of the Center for Civic Education
cosponsored by the Commission on the Bicentennial of the United States Constitution

Summary

The National Bicentennial Competition on the Constitution and Bill of Rights is an educational program developed and administered by the Center for Civic Education of Los Angeles and co-sponsored by the Commission on the Bicentennial of the United States Constitution. Funded by the Commission under an Act of Congress, the program is designed to commemorate the framing and adoption of the Constitution and the Bill of Rights and to revitalize educational programs on the Constitution in our nation's schools.

The program for the 1987-88 academic year, described below, is designed for high school students. Similar programs will be added in the 1988-89 academic year for elementary and junior high school students.

Instructional Program

The curricular program provides high school students with a six-week course of instruction on the basic principles of our constitutional democracy and the history of the development of our Constitution. The instructional program is designed to foster civic competence and civic responsibility through the development of:

- A fundamental understanding of the Constitution and the Bill of Rights, and the principles and values they embody.
- An understanding of the rights and responsibilities of citizens in our constitutional democracy.

Culminating Programs

At the close of instruction, the Competition provides a choice of two activities:

- A competitive program in which entire classes complete as teams to determine winners at congressional district, state, and national levels. The competitive program includes a written test and competition hearing.
- A noncompetitive program in which all students complete the instructional and testing program and participate in a culminating ceremony.

Awards Program

All students completing the competitive and noncompetitive programs whose achievement is satisfactory will be presented with awards by their member of Congress or other prominent officials.

THE NATIONAL PROGRAM

The National Bicentennial Competition will be held annually from 1987, the bicentennial of the framing of the Constitution, through 1991, the bicentennial of the ratification of the Bill of Rights. Field-tested in 1986 among some 10,000 students in 22 states and reviewed by leading scholars and educators, the program will be available beginning in September, 1987 to high schools throughout the nation, and to elementary and junior high schools in September of 1988.

Over the five-year life of the bicentennial period, the program has the capacity to reach every elementary and secondary school in the country and to include more than 1,000,000 students per year.

The program is organized at the local level by congressional district. The interest and participation of educators, community leaders, elected officials, parents, and students is vital to the success of this national program.

Instructional Program

The curricular program offers students a specially-prepared six-week instructional unit containing 30 lessons. The lessons cover the following topics:

1. *Political philosophy*. The basic philosophical ideas that influenced the development of the Declaration of Independence, the Constitution, and the Bill of Rights.
2. *History and experience*. The evolution of constitutional government in England, the colonies, and the new states under the Articles of Confederation, and the experience of the colonies under English rule that influenced the development of the Declaration of Independence, the Constitution, and the Bill of Rights.
3. *The Constitution*. The principal issues and debates of the Constitutional Convention and the struggle between the Federalists and Anti-Federalists over ratification.
4. *Establishing the government*. The establishment of the new government, the emergence of political parties, and the development of judicial review.
5. *Rights and responsibilities*. The protection of freedom of religion, freedom of expression, due process of law, and the equal protection of the laws under the Bill of Rights and the Fourteenth Amendment.
6. *The citizen*. The role of the citizen in our constitutional democracy, including attention to the purposes of government, civic virtue and the common welfare, the rights and responsibilities of citizens, and participation. The curriculum has been designed to be useful for a wide range of student abilities. In order to heighten student interest and learning, innovative methods which place an emphasis on active student interaction and small group work have been built into the materials.

Culminating Programs

1. *The Competitive Progrqm*

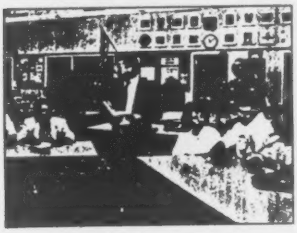
Classes that choose to participate in the competitive portion of the program will work together as teams to demonstrate their knowledge of the Constitution and related subjects. The Competition at the congressional level is composed of two parts, a multiple-choice test and a hearing. Classes with the highest combined score on this two-part test will advance to the next round of the Competition.

A: Written Test
A written multiple-choice test measuring student understanding of the instructional program is taken in the classroom at the close of the six-week instructional period. This is the only time that a written examination is taken.

Since entire classes of students will compete as teams, the average score of a class on the test will be used rather than the scores of individual participants. This will encourage students in each class to study and work together in order to achieve the highest possible class average.

Through this method of conducting the competitive program, students of all ranges of ability are able to participate.

B: The Competition Hearing
The second part of the program is a Competition hearing, which is held before a moderator and a panel of judges drawn from the community. Each class will be divided into six teams, each responsible for responding to questions on one of the six topics covered in the instructional program, described above. In successive rounds, classes will continue their participation as teams by taking part in competition hearings at state and national levels. Each year the final competition wil be held during a special program scheduled for classes in Washington, D.C.



2. *The Noncompetitive Program*
At the close of instruction, classes that choose the noncompetitive option will take a written test on the material covered and, at their option, hold a competition hearing as described above.

Awards Program

Classes in the competitive program will receive special awards for placing first, second, or third in:

- The written test
- The Competition hearing
- Combinations of the written and hearing parts of the program

All students completing the competitive and noncompetitive programs whose achievement is satisfactory will be presented with awards by their members of Congress or other prominent officials.

Opportunities for Participation

The success of the National Bicentennial Competition depends upon the participation of educators, members of Congress, community organizations, and the general public. The program offers opportunities for all members of the community to become involved.

1. Educators and members of the general public can participate by:

- Implementing the program in their schools
- Assisting participating teachers and students
- Coaching teams participating in the competition
- Serving as judges in competition hearings
- Assisting or serving as congressional district coordinators
- Assisting or serving the coordinator of the program
- Assisting in expanding the program to all schools in a congressional district
- Serving on congressional district advisory committees
- Assisting in the development of community resources to send winning teams to state and national competitions

A first step for those who wish to participate would be to contact their local or state National Bicentennial Competition coordinator, or the local office of their member of Congress, or the Center for Civic Education.

2. Members of Congress can participate by:

- Recommending leaders for the program in their congressional districts or states, including the name of a suitable district or state coordinator
- Assisting in establishing or recommending individuals to serve on local or state advisory committees
- Selecting school systems to participate
- Visiting and speaking in the teacher-training and classroom programs
- Recommending or serving as judges at competition hearings
- Presenting award certificates to all participating students and winning classes

Administration of the Program

An administrative network for the National Bicentennial Competition has been created at the national, state, and local levels, with overall coordination provided by the Center. It is composed of state-level coordinators and a coordinator for each congressional district.

National Level Administration

1. National Advisory Committee. The national committee listed in this brochure provides overall guidance and advice on policy and administration. The committee meets twice yearly.
2. Center for Civic Education. The Center is responsible for the national administration of the program. Principal staff responsible for providing assistance to state and local leaders are as follows:

- General Administration — Charles Quigley, Executive Director; Duane Smith, Associate Director; and Kerin Martin, Administrative Coordinator
- Co-Directors, State Programs — Wilson Jordan and Norm Mathers

- Congressional Liaison — Deborah Curtis Laird and Charles Bahmueller

- Organizational Liaison and Public Information — Tam Andrews
- Training and Consultant Services — Mary Jane Turner and Alita Letwin
- Curricular Services — Jane Sure and Judith Matz
- Evaluation and Competition Procedures — Elaine Craig
- Fiscal Management -- James Heredia

State Level Administration

1. State advisory committees. These committees assist in the overall guidance of policies and implementation of the state-level program.
2. State coordinators. State coordinators assume overall responsibility for the implementation of the program in each state. In consultation with U.S. Senators, the state coordinator establishes the state advisory committee. The addresses and phone numbers of state coordinators are found below.
3. Support for state coordination. The following materials and services will be provided to participating state coordinators.

- Funding. Each state will receive $3,500 plus $750 per congressional district to offset partially the costs of state-level administration.
- Training. Each year a three-day leadership training program will be held in Washington, D.C. for state coordinators. All travel and per diem expenses will be provided.
- Materials. All administrative, curricular, and public information materials required for the program will be made available by the Center.
- Program consultants. A network of consultants is available for use by state coordinators to provide in-service training to teachers involved in the instructional program.
- Center staff assistance. State coordinators may call upon the services of Center staff and consultants for assistance in all aspects of the program.

Congressional district administration

1. Congressional district advisory committees. These committees assist in setting priorities and procedures for the implementation of the program within congressional districts.
2. Congressional district coordinators. Coordinators in each congressional district work closely with school system staff to ensure the effective implementation of the program at the local level. In consultation with the member of Congress, the district coordinator establishes the Congressional District Advisory Committee.
3. Support materials and services. Materials and services to be provided to each congressional district program, at the expense of the Center unless otherwise noted, include:

- Curricular materials and tests. Ten classroom sets of student texts, tests, and teachers' guides are provided. Additional sets are available at cost, $150 per classroom set.
- Administrative and instructional manuals. Manuals are provided with information useful for the organization and administration of the program at the district level.
- Leadership and teacher training. Annual leadership training conferences for congressional district coordinators will be held at the Center's expense. Following the conferences, the coordinators, with the assistance of the Center's program consultants or other qualified persons, will provide training for teachers taking part in the program.
- Coordination with congressional offices and cooperating institutions. The Center's staff will assist local coordinators in involving members of Congress and representatives of cooperating organizations in their programs.
- Public information program. The Center will assist local coordinators in developing newspaper and other media coverage of the principal events of the program. This assistance will include the provision of a model format for the Competition hearing suitable for television programming.
- Center staff assistance. State coordinators, Center staff, and the network of program consultants will be available for assistance in all aspects of the program.

4. Selection of participating school systems. The congressional district coordinator and advisory committee will be responsible for selecting participating schools in each congressional district. It is the policy of the National Bicentennial Competition to encourage an equal opportunity for all public and private schools to participate.

Programs of the Center for Civic Education

Other programs of the Center include:

- The Law in a Free Society civic education curriculum for students in grades kindergarten through twelve
- The Law-Related Education National Training and Dissemination Program, funded by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice
- The Bicentennial Leadership Project, funded by the J. Howard Pew Memorial Trust, cosponsored by the Council for the Advancement of Citizenship

- The Law-Related Education Program on the Bicentennials of the Constitution and the Bill of Rights, funded by the U.S. Department of Education
- Law-Related Education in Los Angeles County Schools, funded by the Los Angeles County Bar Association

Notice of nondiscrimination

The Center for Civic Education, cosponsor of the National Bicentennial Competition on the Constitution and Bill of Rights, affirms that no student shall be precluded from program participation on the basis of race, color, sex, handicap, or national/ethnic origin.

All rights and privileges of program participation and benefits shall be extended equally to all schools and school systems regardless of source of

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funding, religious identification, or students' race, color, sex, handicap, or national/ethnic origin.

For additional information

For further information on how you can participate in the program, please call the local district office of your Member of Congress or the
Center for Civic Education at
(818) 340-9320.
Or write to the Center at
5146 Douglas Fir Road,
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Benefits of the National Bicentennial Competition

For Citizen

- Fosters the development of an enlightened populace by focusing on what every citizen should know about the Constitution and Bill of Rights. This should lead to:
    - an increase in reasoned commitment to the fundamental principles and values embodied in these documents; and
    - improved public debate on the application of those principles an values.
- Provides an effective and substantively sound means of commemorating the Bicentennials of the Constitution and Bill of Rights
- Provides for participation by representatives of national, state, and local public and private sector organizations, which will legitimize the program among key constituencies and provide quality control and the avoidance of bias in the program and its materials
- Builds pride in the nation and feelings of unity

For schools

- Helps fulfill the historic civic mission of education
- Improves instruction on the Constitution
- Fits and complements the required curriculum
- Provides opportunities for all students:
    - to take a part in the competition, from the lowest achievers to the most gifted
    - to engage in cooperative group activities and learning
    - to develop a team spirit in a meaningful endeavor
- Improves students':
    - attitudes towards government and other forms of legitimate authority
    - participatory skills and adherence to the rules of the game
- Provides for recognition for achievement for teams at all levels
- Improves school governance and student behavior
- Improves relationships with the general community
- Improves relationships with members of Congress and increase understanding by those members of the needs of the schools
- Fosters increased private sector support for educational programs

For Congress

- Fosters a more enlightened constituency
- Reduces the burden of inappropriate expectations by constituents
- Provides opportunities for a high level of visibility in relation to a positive activity
- Provides opportunities to involve key constituents in leadership role in the competition
- Increases understanding of educational institutions, their operations, their strengths and weaknesses, and the effects of federal policy and programs on the schools
- Provides opportunities for cooperative efforts with key community leaders and members of the general community that may not occur under other circumstances

For the Administration

- Provides a productive national program consistent with the administration's recognition of the need for improvement of civic education.
- Provides for high visibility and positive leadership at low cost
- Promotes a high level of public/private sector support at local, state, and national levels
- Provides an effective, sound, substantive means of commemorating the Bicentennials
- Fosters a broader based, positive relationship with Congress
- Meets educational needs presently being focused upon, e.g.,
  - excellence
  - character and civic virtues
  - gifted
- Provides for bipartisan cooperation in a meaningful endeavor

United States Senate
WASHINGTON, DC 20510

February 5, 1987

Dear Colleague:

We are writing to encourage you to participate in implementing in your state the National Bicentennial Competition on the Constitution and Bill of Rights. This program, recently funded by Congress and endorsed by the Commission on the Bicentennial of the U. S. Constitution, will provide for students at the high school level a six-week instructional program designed to foster an understanding of the fundamental principles of our constitutional democracy and the history of its development. Following this instruction, a competition will take place in which entire classes compete as teams to determine congressional district, state, and national winners.

By agreeing to sponsor the National Bicentennial Competition you will be asked to recommend a state coordinator and to assist in establishing a state advisory committee. The Center for Civic Education, which is administering the project, will provide each state a grant of $3,500 plus $750 per congressional district to offset the cost of statewide administration. In addition, the Center will provide leadership training and consultant assistance to each state free of charge and each congressional district will receive curricular and testing materials for participation by ten classrooms of students, also free of charge.

The National Bicentennial Competition offers you an exciting opportunity to take part in a variety of activities in your state. These include helping to select participating school systems; visiting teacher training and classroom programs; judging competition hearings; and presenting awards to participating students and winning classes at the state competition. In the event that the Senate schedule precludes you from travelling to your state for these events, a designated representative from your office may step in.

Chief Justice Burger has said that the primary thrust of the commemoration of the bicentennial of the Constitution and the Bill of Rights should be to provide a "history and civics lesson for us all." We feel that this program provides an excellent means for all Senators to aid in furthering among our youth an understanding of and a commitment to the fundamental principles and values of our constitutional democracy. It is our hope that each of you will help to fulfill this special responsibility by taking a leadership role in supporting this important program in your state.

We encourage you to attend a brief meeting to be held on Tuesday February 17 at 2:00 p.m. in room 562 of the Dirksen Building to obtain further details about this program.

For your convenience, an acceptance form is attached which should be completed and returned by February 20. For further information, please see the attached details and contact Charles N. Quigley, Executive Director of the Center for Civic Education in Los Angeles at (818) 340-9320 or Susan Carlson, Commission on the Bicentennial of the U. S. Constitution at (202) 653-5203.

Sincerely,

Ted Kennedy
Edward M. Kennedy

Strom Thurmond
Strom Thurmond

Ted Stevens
Ted Stevens

Dennis De Concini
Dennis DeConcini

Congreſs of the United States
House of Representatives
Washington, DC 20515

January 8, 1987

Dear Colleague:

We are writing to encourage you to participate in implementing, in your Congressional District, the National Bicentennial Competition on the Constitution and Bill of Rights. This program, recently funded by Congress, will provide for students at the high school level a six-week instructional program designed to foster an understanding of the fundamental principles of our constitutional democracy and the history of its development. Following this instruction, a competition will take place in which entire classes compete as teams to determine Congressional District, state, and national winners.

By agreeing to sponsor the National Bicentennial Competition, you will be able to designate ten classes in your District to receive at no cost the Competition curricular materials developed by the Center for Civic Education. The Center, which is also administering the program, will provide leadership training and consultant assistance to participating schools.

The National Bicentennial Competition offers you an exciting opportunity to take part in a variety of activities at home. These include recommending program leaders in your District; selecting school systems to participate; visiting teacher training and classroom programs; judging competition hearings; and presenting awards to participating students and winning classes. In the event that the House schedule precludes you from travelling to your District for these events, a designated representative from your District office may step in.

Chief Justice Burger has said that the primary thrust of the commemoration of the bicentennials of the Constitution and the Bill of Rights should be to provide a "history and civics lesson for us all." We feel that this program provides an excellent means for all Members to aid in furthering among our youth an understanding of and a commitment to the fundamental principles and values of our constitutional democracy. It is our hope that each of you will help to fulfill this special responsibility by taking a leadership role in supporting this important program at the local level.

For your convenience, an acceptance form is attached which should be completed and returned by February 2. For further information, please see attached details and contact Charles N. Quigley, Executive Director of the Center for Civic Education in Los Angeles at 818/340-9320, or Susan Carlson, Commission on the Bicentennial of the U.S. Constitution, 202/653-5203.

Sincerely,

Silvio O. Conte — Lindy Boggs — Augustus F. Hawkins

Silvio Conte, M.C. — Lindy (Mrs. Hale) Boggs, M.C. — Augustus F. Hawkins, M.C.

Attachments

TESTIMONY OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
ON
FEDERAL COMMUNICATIONS COMMISSION APPROPRIATIONS FOR THE 1988 FISCAL YEAR

This statement is submitted for the record of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Senate Committee on Appropriations on behalf of the National Association of Regulatory Utility Commissioners (NARUC).

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

The Association greatly appreciates this opportunity to request your support for funding to defray the travel expenses of the State commissioners and supporting staff of the at least two FCC Federal-State Joint Boards (CC Docket Nos. 78-72 and 80-286 and CC Docket No. 83-1376) which will be meeting during the 1988 Fiscal Year (FY).

Since our members represent the State governmental agencies which regulate intrastate telecommunications, we are extremely interested in ensuring that the Joint Boards remain effective bodies able to assist the FCC in implementing and monitoring the many changes currently taking place in telecommunications regulation. The role of Joint Boards in developing national telecommunications policy has proven of immeasurable benefit to consumers and the nation as a whole. Our testimony traces the activities of the Joint Boards since their inception with particular emphasis on this past year's highlights.

The Role of The Federal-State Joint Boards

1. Jurisdictional Separations Joint Board (Docket No. 80-286)

On June 11, 1980, the FCC instituted a proceeding to amend Part 67 of the Commission's rules concerning jurisdictional separations. The Joint Board was established pursuant to Section 410(c) of the Communications Act[1] to develop the relevant separation manual revisions.

In late 1981, the Joint Board issued its first Recommended Decision and Order in Docket 80-286 which proposed a gradual phase-out of customer premises equipment (CPE) in the separations process and capped CPE plant accounts for separations purposes as of December 11, 1982. Also on December 14, 1981, the Joint Board adopted a Recommended Decision and Order proposing that the FCC freeze the subscriber plant factor (SPF) at the average 1981 annual percentage level, pending Commission prescription of a new method for allocating non-traffic sensitive (NTS) costs. On February 24, 1982, the FCC adopted these recommendations with minor technical modifications.[2]

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[1] Section 410(c) of the Communications Act of 1934 [49 U.S.C., Sec. 410(c)] provides that the FCC shall refer any proceeding regarding the separation of telephone company property between Federal and State jurisdiction, and may refer any other matter of joint Federal-State concern, to a Joint Board composed of three FCC commissioners and four State commissioners. Section 410(a) of the Act provides that the Joint Board members receive such allowances for expenses as the Commission shall provide.

[2] On the same day, the Joint Board recommended amendment of the CPE plan designed to allow individual States to advance the date for capping the CPE accounts on a company by company basis. After allowing an opportunity for comment on this proposal, the Commission adopted the Joint Board recommendation with minor modifications on May 24, 1982.

On April 15, 1983, the Federal-State Joint Board recommended a new jurisdictional allocation methodology for certain telephone company costs. The Joint Board also recommended the funding level for a universal service fund to provide targeted rate support to telephone subscribers in high cost rural areas. In order to provide the greatest opportunity to accommodate Federal and State interests and to ensure that industry and consumer representatives had the best chance to present their views, the Joint Board conducted several meetings in Washington, D.C. and a series of eleven regional hearings. The Commission subsequently adopted the Joint Board's recommendations with minor changes and clarifications.

In 1984, the Joint Board played a significant role in resolving many issues relating to the divestiture of AT&T. The influence of the States in achieving a compromise alternative to the FCC's access charge plan is perhaps the most telling example of the Joint Board's immeasurable contribution to consumers and the nation as a whole in developing national telecommunications policy.

The fixed (NTS) costs of the local exchange assigned to the interstate jurisdiction were once recovered through long distance toll rates. However, in December 1982, the FCC established a uniform "subscriber line charge" (SLC) to recover a major portion of NTS costs through local phone bills whether or not long distance service is used. The proposal called for a $2.00 per month charge for residential customers in 1984 increasing to $3.00 in 1985 and $4.00 in 1986. State regulators were strongly opposed to the FCC subscriber line plan on grounds that it threatened affordable telephone service for all citizens in the United States. Indeed, the NARUC so testified before Congress in 1983. Nevertheless, the FCC reaffirmed in February 1984 its conclusion that partial if not all recovery of NTS costs through a SLC would serve the public interest and, in April 1984, charged the Joint Board with examining how best to implement an end user access charge for residential and single-line business customers. Because of widespread opposition to the SLC, the Joint Board was also granted authority to develop possible alternatives to the FCC plan.

After months of careful examination and negotiation, the Joint Board recommended that the FCC implement only limited subscriber line charges for residential and single-line business subscribers. Under this proposal, a $1.00 monthly subscriber line charge for these customers would be implemented in June 1985 and increased to and frozen at $2.00 per month in June 1986.

In another area, the Joint Board played a critical role in heading off a confrontation between the States and FCC over the separations treatment of equal access and network reconfiguration costs (EANR). On April 11, 1984, the Joint Board issued an Order Inviting Comments on the allocation of EANR costs. Upon conclusion of the pleading cycle, the Joint Board was faced with two choices for allocating these costs: relative toll minutes of use, advocated by the FCC, or relative access minutes of use, advocated by the States.

The NARUC was extremely concerned that shifting these costs to the intrastate jurisdiction through use of toll minutes was contrary to the intent of the Modified Final Judgment (MFJ). The MFJ clearly intended equal access to benefit users of the predominantly interstate long distance market. Moreover, use of toll minutes would have forced the exchange carriers to substantially raise local rates, resulting in dropoff from the network. Following months of negotiation between State and Federal regulators, the Joint Board issued its July 12, 1985 decision to separate the costs of equal access on the basis of relative access minutes of use.

Allowing the States to participate in this cooperative process prevented upward pressure on local rates and avoided a protracted confrontation with the FCC.

While the Joint Board made recommendations on a number of other issues related to the allocation of non-traffic sensitive costs, its focus in late 1985 was on lifeline telephone assistance.

On March 29, 1985, the Joint Board released an Order Inviting Comments on lifeline issues. The four issues to be addressed were: the proper State and Federal roles in implementing assistance measures to ensure the continuation of universal service for low-income households; criteria for determining eligibility for such assistance; the type or types of lifeline telephone service which should be made available to eligible subscribers; and the mechanism for funding these assistance measures.

On October 11, 1985, the Federal-State Joint Board adopted a plan under which the FCC matches State assistance to low-income households under qualifying programs up to the amount of the Federal subscriber line charge. While this program provided the States with a strong incentive to implement lifeline programs whenever appropriate, State participation was not mandatory. On December 2, 1985, the FCC adopted these recommendations of the Joint Board. The result is a plan that permits each State Commission to tailor lifeline assistance to the unique needs of its State. This solution is far more workable than a Federally imposed plan.

During the current fiscal year, the Board has convened to revisit NTS cost allocation issues, as the last mandated increase in the subscriber line charge went into effect in June of 1986.

The method of NTS cost recovery endorsed by the FCC members of the Joint Board in their recent deliberations is the method proposed by the telephone exchange industry in its "Unity 1-A" plan. While the States generally favor the less regressive per-minute charge by the local exchange company to the interexchange carrier (which is subsequently reflected in long distance rates), the industry and the FCC prefer greater NTS cost recovery through the fixed monthly subscriber line charge on all local phone bills (regardless of whether long distance services are used).

The telephone exchange industry, with the full support of the FCC, proposed to further raise the subscriber line charge from $2 to $3 this summer, $4 in January of 1988, and eventually to the level high enough for full NTS cost recovery (which has been estimated at approximately $8 per month on a national average).

At the Winter Committee Meetings of the NARUC in February, the Executive Committee adopted a resolution opposing an increase in the charge until after full review of the effects of one full year's experience at the $2 level imposed on June 1, 1986.

After lengthy and highly publicized negotiations between the Federal and State commissioners on the Joint Board, recommendations were issued on March 12, 1987. While not incorporating the exact provisions of the NARUC resolution, the Board's recommendations were dramatically different from the FCC and industry proposals. Not only were subscriber line charge increases spread over a longer period of time, but the Board agreed to forever cap the charge at $3.50.

In the NARUC's view, this compromise between the States and the FCC is a prime example of the Joint Board process at its best.

The compromise should result in a 15 percent reduction in long distance rates over the next six years while not endangering universal service by pricing low-income consumers off the local network. To ensure these goals are met, the FCC Order, as a direct result of State advocacy, will include a provision requiring the Board to monitor and report to Congress and the

NARUC the effects of the subscriber line charge increases on subscribership. Adverse effects would require corrective action and could result in a roll back of the charge.

We strongly believe that the cooperation between Federal and State regulators through the Joint Board process to achieve more workable and eminently more fair decisions involving access charges, separations treatment of EANR costs, and lifeline telephone assistance clearly demonstrates the Joint Board's effectiveness. Similar cooperation is expected to resolve the remaining complex areas that the Joint Board has been ordered to examine.

These areas include evaluation of current procedures for allocating Category 6 Central Office Equipment due to new technology and current market conditions; review of Category 8 Circuit Equipment as a separations manual issue; consideration of changes in the separations treatment of the new WATS access service; and establishment of guidelines and processes by which to monitor the effect of SLC increases and Separations Manual revisions on subscribership.

Certain matters of mutual State and Federal concern either have insignificant impact on separations or require narrowly targeted attention. Accordingly, new Joint Boards were established in 1985 to: 1) determine interstate and intrastate usage of Feature Group (FG) A or B minutes of use for computation of access charges (Docket 84-124); and 2) make recommendations concerning Alaska rate integration (83-1376). In 1986, the FCC established a fourth Joint Board (86-297) to conform the Separations Manual to the new Uniform System of Accounts.

2. FG A and B Minutes of Use Joint Board (Docket No. 84-124)

On April 19, 1985, the FCC adopted an order establishing a Federal-State Joint Board on Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access

Service. This resulted from a Petition for Declaratory Relief by MCI Telecommunications Corporation requesting FCC preemption of State calculation of intrastate switched access usage by the other common carriers (OCCs). In its order, the FCC stated that since issues concerning the jurisdictional classification of switched access traffic are a matter of concern to both Federal and State regulators, the creation of a Federal-State Joint Board would be an appropriate means of achieving a permanent resolution to the questions raised by MCI. On October 28, 1985, the Joint Board released a notice requesting comments concerning the measurement of OCCs' usage of Feature Group A and B switched access service. The comments have been analyzed and a recommended order is expected this summer.

3. Alaskan Rate Integration Joint Board (Docket No. 83-1376)

On September 17, 1985, a new Joint Board was established to analyze the compatability of current rate integration policies and competition in the provision of telecommunications service between Alaska and the contiguous States. Alaska is the only State whose rates for telecommunications services are not integrated with those of the lower forty-nine. The Alaska Joint Board is analyzing economic and social policy data and conducting field hearings in several bush communities to assure the inclusion of diverse input into its decision-making process on this complex issue. It is expected to convene several times this Fall before issuing its recommendations.

4. USOA Joint Board (Docket No. 86-297)

Last summer, a fourth Federal-State Joint Board was established to recommend Separation Manual changes for the FCC's revised Uniform System of Accounts (USOA) for telephone companies. After many meetings and extensive study, the USOA Joint Board issued its recommendations on March 17, 1987. Although, having completed its task, this Board no longer requires funding, brief mention of its recommendations will once again show the merits of this cooperative process.

Adhering to the principle of a resolution adopted by the NARUC in November, 1986, the Joint Board recommended adoption of a single Separations Manual for both large and small carriers designed to simplify the unnecessarily burdensome and complex separations procedures currently used and to minimize shifts in revenue between inter- and intrastate jurisdictions.

The Manual's simplification should result in administrative cost savings which will be passed along to consumers through reduced rates. In addition, the jurisdictional shift represents less than one-half of one percent of the total interstate revenue requirement for exchange carriers. These provisions represent significant improvements unquestionably in the public interest. Although the USOA Joint Board is finished, the main Joint Board will monitor the effects of these changes while it studies the SLC increases.

Joint Boards will continue to play an active role in future telecommunications policy decisions. Since the issues assigned to the Boards are of a national scope, their efforts require a significant amount of travel by the State members and their staff to Washington, D.C. and by all Joint Board members and their staff to other parts of the country.

Defraying the Travel Expenses of the State Members of the Federal State Joint Board

Due to the significantly expanded monitoring role the Joint Board will undertake in the future, the NARUC respectfully requests that at a minimum the $100,000 requested by the Administration be appropriated for FY 1988 to defray the travel expenses of the State members of the Joint Boards and their staffs. $100,000 is a conservative estimate of the funds which will be needed in FY 1988, as the Alaska Joint Board may require several meetings in late 1987 and early 1988 before issuing its

Recommended Decision and Order, and the main Joint Board, with its new monitoring role, will need to meet one or two times during the 90-day report periods before each increase in the subscriber line charge on top of its already full agenda of other matters.

Indeed, the States' in-kind contribution well exceeds $100,000 in terms of the State-paid compensation to the seventeen State participants in the work of the Joint Board. While the full salaries of the Joint Board staffers are paid by their State commissions, an average of one-fourth of their time is spent on Joint Board matters.

In the past, Congress has recognized that the participating State Joint Board members and their staff render a national service when a Joint Board is convened. In 1982 legislation involving telecommunications competition and deregulation contemplated the establishment of a Joint Board to examine crucial telecommunications issues. Thus, Section 222 of S.898 provided for the establishment of a Federal-State Joint Board to ascertain jurisdictional cost separations for the computation of access charges and for the employment of staff and payment of travel expenses for the four State Board members. Similarly, the transitional and interexchange Joint Boards in H.R. 5158, Section 274(i)(3), were authorized to appoint and fix the pay of staff personnel. Moreover, in 1983, the universal telephone service preservation legislation introduced in the House and Senate (H.R. 4102 and S.1660) envisioned the Joint Board as a permanent entity to administer a universal service fund for the maintenance of universal telephone service at affordable rates. Although these pieces of legislation were never enacted by Congress, the contemplated role of a Federal-State Joint Board in each bill clearly demonstrates Congressional recognition of the significant contribution made by State regulators to the development of national telecommunications policy. State involvement is essential to determining crucial telecommunications issues, since State officials are uniquely situated to assess the needs of their consumers and to balance any competing interests. Moreover, the Federal government benefits in convening Joint Boards by acquiring the benefit of State expertise, conserving the use of Federal officials and strengthening Federal-State cooperation. It would be inappropriate for a few State commissions with limited travel budgets to bear the travel, food and lodging expenses of the cooperating commissioners when the service these officials and the staff provide is of national benefit.

Section 410(a) of the Communications Act provides the necessary authorization for the appropriation of these funds. The NARUC urges the Subcommittee to support the allocation of the necessary funds.

Conclusion

At a time when the telecommunications industry is undergoing a dramatic transformation it is imperative that Federal and State regulatory bodies continue to work together to implement the impending changes and ensure a smooth transition without disruption in services to the public. In order to maintain effective State participation in these efforts, we respectfully urge your support for an appropriation to defray the expenses of the State commission and staff members of the Federal-State Joint Board.

Respectfully submitted,

Paul Rodgers
General Counsel

Caroline Chambers
Associate Director, Congressional Relations

SOCIETY OF AMERICAN FLORISTS

TESTIMONY

The Society of American Florists is a trade association which represents the entire floral industry. The Society has approximately 10,000 members, including growers, wholesalers, retailers and 144 floral industry trade associations whose memberships comprise an additional 22,000 businesses.

The floral industry is concerned because budget cuts to the Census Bureau's Agriculture Division have forced the Census Bureau to eliminate funds for the Census of Horticultural Specialties Report. The next census is scheduled for early 1989--reporting on 1988 production results. The Horticulture Specialties Report is the only comprehensive report on actual production of United States horticulture available. It provides unbiased statistics which are vital to the government, our industry, and which aid the consumer by helping to foster production and marketing efficiencies.

The Horticulture Specialties Report is unique and cannot be duplicated by private sources. By law, growers in the horticulture industry must report the information required by the census every ten years. The data collected by the census takers is objective, confidential, and more reliable than data which could be gathered through private industry efforts.

Statisticians at the census bureau possess knowledge and years of specialized experience that exist no where else. The census statisticians break the information down into categories of horticulture specialties by regions and states. This information enables industry analysts to make industry comparisons and predict industry trends.

Accurate and complete production figures can only be generated by the Horticulture Specialties Report.

Census also has very unique abilities involving mailing lists which cannot be duplicated elsewhere. The ability to identify horticultural growers from the general Census of Agriculture is part of the key, but the confidentiality that the bureau can provide also aids in gaining the confidence of those who lend private mailing lists solely for the census. This kind of cooperation could not be bought with any amount of private funding, and there is no other government or horticulture industry report which contains such complete and accurate data.

In fact, only one other government report pertaining to floriculture industry production exists--the annual Floriculture Crops Report published by the Department of Agriculture. The Floriculture Crops Report is an annual report of production figures for selected and specific crops in twenty-eight states. However, participation in the survey is voluntary and only operations with gross sales of $10,000 are invited to participate. Therefore the Floriculture Crops Report is not as comprehensive or accurate as the Census Horticulture Specialties Report.

The Floriculture Crops Report was also cut out of USDA's budget several years ago to save money, but the lack of data created such uncertainty in the industry that Congress reinstated the funds needed and directed USDA to continue doing the report. In fact USDA, even in the face of Graham-Rudman cuts this year, has retained that report because of our industry's critical need for data.

It is disheartening and counter-productive for the floral industry to persuade one government agency of the need for horticultural statistics of annual projected production, only to find that we've lost the only actual production data base we had for comparisons.

The Horticulture Specialties Report takes five years to complete. A census must first be taken and analyzed by Census Bureau statisticians. Congress appropriated money in FY86 and FY87 to prepare for collection of the data. An additional $300.000 will be needed in FY88 to continue that work. If the money is not appropriated. the $100.000 advanced in the FY86 budget and the $155.000 advanced in the FY87 budget would simply be money down the drain.

Government itself is a prime user of the data compiled by the Horticultural Specialties Report. One horticulture industry market analyst reports that the second highest request for industry statistics comes from various government agencies. State agriculture offices seek information that can be used to help appropriate extension service and research funds. There are many requests from politicians for information to answer constituent needs about which crops to grow. The Environmental Protection Agency requests the data to aid in developing impact statements for new restrictions being placed on widely used pesticides. The Animal and Plant Health Inspection Service uses the data to try and determine potential effects should a reduced quarantine restriction suddenly admit a new pest to plague our industry. The U.S. International Trade Commission uses it to try and determine the effect imports have on domestic producers of ornamental products when they are investigating a countervailing duty or dumping allegation. Even the Michigan State Highway Department recently asked how to value a greenhouse they were condemning as they completed an Interstate around Detroit.

Without the Horticulture Specialties Report. the floral industry can only guess at the extent of its growth. The horticulture industry has made significant strides in the seventies. moving from a 1/5 billion dollar industry in 1970 to a 1 1/2 billion dollar industry in 1979. We estimate that wholesale floriculture in 1988 could be a $4.8 billion business. translating to over $10 billion at retail. This would mean the industry has more than tripled its growth in the last ten years. This does not count the services associated with flower sales; containers, ribbons, credit, delivery, design work, etc.

Floriculture is generating new business, new jobs, increased usage, and very positive economic activity. The industry provides exceptional growth opportunities for family businesses. According to U.S. personal consumption expenditure figures, consumer expenditures for flowers, seeds and potted plants increased by 28.5% from 1980 to 1983. Yet even the increasing per capita consumption is still very low; about one foliage plant per person per year, and even less for flowering plants and cut flowers. Even per capita consumption of a plant as popular as the Poinsettia is only 1/5 of one plant per person per year.

Such a growth oriented industry must have accurate statistics so future growth will not be haphazard. Our industry's growers regularly make the most intensive investments in production of any form of agriculture. Greenhouse costs might begin at about $175,000 per acre, but they can easily run to five times that amount. A greenhouse which is adequate for one crop is not necessarily suitable for another. Prudent growers decide whether they are going to raise bedding plants or raise cut roses before they build a greenhouse. Production statistics aid in that decisions.

A grower must also be able to ascertain where there is room for growth and where the market is so competitive he would be better off planting some other crop. Growers must be able to evaluate which crops will be in demand and which will not. Retailers and wholesalers must be able to plan market strategies knowing which crops will be available and making informed judgments about expected prices. Only through the use of appropriate statistics can the businesses in the industry expend their efforts with relative confidence that their efforts will yield maximum profits.

American growers must compete with imports in the domestic markets at the same time they are investigating foreign markets. for export. Statistical uncertainty makes competition with foreign producers more difficult. A national on-going picture of the industry is essential to plan market strategy in a competitive market.

Educators and Researchers who serve the industry use the census data to help them analyze the direction of the industry. Universities and trade schools need the data to devise curricula and training programs that would meet the needs for an expanded labor force.

According to the 1978 Horticulture Specialties Report. the floriculture industry accounted for 223.000 workers. Without the Horticulture Specialties Report. the industry can't tell you how many people we employ now. Lack of present data will make it impossible to estimate how many workers we can expect to employ in the future. Economic statistics would help the industry prepare to absorb new workers. enable trade schools to develop training programs which will be needed. and colleges to expand their horticultural departments.

Every Congressional district contains florists and many contain grower operations employing dozens of people. The horticulture industry pervades many aspects of American life. with 82% of all households engaging in some kind of horticultural pursuit in 1983. Gardening ranked as the nation's number one outdoor leisure activity according to a gallop poll. The three most popular outdoor activities--lawn care. flower gardening and vegetable gardening--ranked ahead of all other forms of outdoor leisure activities including exercise. fishing. bicycling. camping and jogging. Horticulture is a very real consumer issue. It is also a small business issue and, of course, it is an agricultural issue.

Other food and fiber agricultural commodities have government statistical reports available to them as a matter of law. The floriculture industry is an important and thriving segment of agriculture and deserves the same consideration. Our growth record appears to be phenomenal and our potential enormous. We need the means to track that growth accurately so that we can realistically understand what has happened, is happening, and what might happen.

The Census Bureau's Horticulture Specialties Report is a legitimate, worthwhile government program. Any funds expended on the report would have a significant rate of return for the government because of increased industry profitability. Please appropriate the required funds to have the Horticulture Specialties Report reinstated into the Census Bureau's budget.

In order for Census to be able to complete the report, $1.6 million must be appropriated through FY90. In FY88, the Census Bureau requires $300,000 to continue the work started in FY86. We urge you to appropriate those funds for the Horticulture Specialties Report so that the horticulture/floriculture industry can achieve its full potential as a dynamic segment of the nations agricultural economy and the economy in general.

Statement of

Richard E. Gutting, Jr.
Vice President - Government Relations
National Fisheries Institute

The National Fisheries Institute appreciates the opportunity to submit this statement on the proposed FY 1988 fishery budget of the National Oceanic and Atmospheric Administration. We also appreciate the major efforts this Committee has made in the past to ensure that these programs receive the funds needed to manage and develop our nation's fishery resources.

The Institute represents the U.S. fish and seafood industry. Our 1,100 members are involved in all facets of the industry, including harvesting, processing and marketing. We are concerned about the funding of NOAA's fishery programs because they are critical to the conservation and management of our country's fishery resources and the development of our industry.

NOAA's budget proposal calls for the wholesale dismantling of the National Marine Fisheries Service, the closing or crippling of its fishery laboratories, the termination of the National Sea Grant Program, the lay up of the fishery research fleet and the suspension of all state and industry fishery development programs.

For the most part, the proposals are the same as those repeatedly rejected by Congress the last five years. It should not be surprising that the Institute believes they should be rejected once again this year.

There are no new proposals to conserve fishery resources or promote their development in NOAA's budget. Instead, several additional projects have been added to NOAA's hit list. On this list now are all the items added by Congress last year, the remainder of NOAA's fishery development efforts and millions of dollars in hidden reductions referred to as so- called "adjustments to base."

The only new proposal this year is to collect some $100 million in new user fees each year from recreational and commercial fishermen and the seafood industry. When these fees are collected, NOAA proposes to add $29 million to its budget, and transfer half of the revenues to those coastal states helping NOAA to collect the fees.

GENERAL COMMENTS

NOAA is responsible for conserving, managing and developing the largest and most diverse fisheries in the world. These fisheries produce roughly one-fifth of the world's total harvest and contain some of our country's greatest natural resources. Because they are renewable, they can continue to contribute billions of dollars to our economy each year if they are properly managed and developed.

Over 300 000 people work in the U.S. fishing industry and depend upon U.S. fisheries for their livelihood. All Americans either eat or otherwise use the products these fisheries. These products are found not only in restaurants, supermarkets and school lunch lines, but are included in animal feeds and in dozens of industrial and medical products.

America's fisheries offer our country a tremendous opportunity to create new jobs and economic wealth and to address the severe balance of trade deficit in fishery product. Indeed, if we made full use of our fishery resources we could more than double our annual production.

Some of our unused resources continue to be exploited by foreign fleets. There also are large untapped fishery resources off our coasts. These fish could supply both domestic and foreign markets if we knew more about them, and could find a way of delivering their products at competitive prices.

By developing these fisheries the Department of Commerce has said we would generate many thousands of new jobs and add billions of dollars to the gross national product.

Our country's investment in its commercial fisheries goes back over 110 years when Congress established the Fisheries Commission. Since then a coordinated program of research, stock assessment, management and development has evolved. Today, federal funding supports activities of the National Marine Fisheries Service (about $170 million), the Sea Grant Program (about $20 million), the Fish and Wildlife Service (about $5 million), the Coast Guard ($95 million) and the individual states (about $10 million). Altogether the federal investment this year is about $300 million.

Even if you ignore the user fees and special assessments already being paid by our industry, and assume that the taxpayer funds all of these programs, the federal investment in our fisheries is quite a bargain in comparison to the industry's $30 billion contribution to the economy. Compare, for example, the U.S. investment to the investments made by other fishing nations. Canada, for example, produces about 1.2 million metric tons of seafood. Its fishery budget, however, exceeds $350 million. This means they are investing more than we are, for less than one-fourth the production. Mexico invests over twice what we do, also for less than one fourth-our production. Finally, in Japan, which is the number one seafood producer in the world, the relative national investment is over four times what it is in the United States.

To harvest fish at optimum levels, you must have an accurate idea of what resources are available. Forecasting what will happen in a fishery, however, is a difficult task. Fish are eating fish, ocean conditions are changing constantly, and nobody can see what is going on. Mistakes by scientists to leads overfishing or underfishing, either way it means loss of jobs and production.

What you won't find in the federal budget relating to commercial fisheries are the massive price supports and subsidies provided to other food producers. The commercial fishing industry has never been included in these programs, and doesn't want to be. That's because our industry is made up of a diverse group of small businesses which are fiercely independent and competitive.

Most of the company executives in our industry take the view that less government is better. As a result, the federal role--and thus the investment--in commercial fisheries has been kept to a minimum. Federal programs have been limited to those activities needed to assess the condition of the various species harvested, see that landings are at appropriate levels and ensure that the information needed to develop the total resource is available.

SPECIFIC COMMENTS

Fishery Science

NOAA offers many different proposals which would reduce or eliminate funding for a number of significant activities in the "Information Collection and Analysis" category. These activities involve biological studies, resource surveys, habitat investigations, studies of how oceanic conditions impact fishery resources and the collection and analysis of catch and effort information and other economic data concerning the fishing industry. Decreases totalling almost $40 million, out of a current budget of about $92 million, are proposed.

NOAA's budget report says that these decreases would involve the closing of 5 of the 22 major fishery laboratories of NOAA. The Institute believes this report grossly understates the impact of NOAA's budget proposal. Funding for the laboratories in Milford, CT, Sandy Hook, NJ, Beaufort, NC, Auke Bay, AK, and the facility in Portland, OR would receive only token funding to keep them technically "open." For all practical purposes, they would be put out of business. Indeed, only a handful of fishery laboratories would be able to conduct any real research under the proposed NOAA budget.

NOAA's budget report also says that only 20 percent of the agency's fishery scientists and research staff would be terminated. What the report fails to say is that most of the remaining funds have been used to pay the costs of keeping buildings "open" and to cover salaries to minimize the employment impact. Scientists, however, cannot conduct research without funds. Our analysis of the budget suggests that many more scientists and researchers would have to be fired to leave the remaining people with even minimum fundings to continue the scientific work of the agency.

Even if the facility and employment figures in NOAA's budget report gave you the true picture, they are troubling. Once highly skilled and experienced personnel are let go and research teams are disbanded, it is difficult and expensive to replace them. Once the collection of biological and harvest information is stopped, you destroy forever the ability of fishery scientists to assess trends and make it impossible for them to make sound predictions. Decades of work is destroyed. Yet, this is the likely impact of NOAA's proposals.

The loss of people and facilities is only part of the NOAA budget story. Many of the fishery scientists funded under NOAA's proposal would no longer be able to continue their research at sea, because NOAA's research fleet would be laid up. Sea days would be cut drastically even under the wildly optimistic projections of NOAA concerning vessel chartering. NOAA charters private vessels and operates it own vessels. Laying up NOAA's research fleet means that the scientific assessment of our fishery resources will depend solely on the availability of privately-owned vessels which may or may not be there when needed. It also disregards the need for consistent and reliable fishery data that comes from using the same research vessels year after year.

The Institute is dumbfounded by NOAA's proposal to dismantle its scientific efforts in fisheries. Consider what has happen when scientific information was not available. The Georges Bank haddock fishery is a good example. During the period of 1930 to 1964, the fishery produced an annual domestic harvest of about 50,00 tons. In 1965 and 1966, an intense foreign fishery developed. The stock rapidly declined due to overfishing, and the average annual catch since the 1960's has been less than 10,000 tons. The total loss from the Georges Bank haddock fishery exceeded $400 million in ex-vessel value, and many times that in total contribution to the national economy.

A lack of good information can also lead to underfishing. Consider what occurred in the brown king crab fishery off Alaska. King crab management is based on the size of the crabs taken. Because fishery managers lacked good information on the size of brown king crab at sexual maturity, they set the size limit of 6 1/2" in carapace width based on experience with other king crab species -- a conservative size limit. The fleet found that fishing in certain productive areas was not economically feasible since the vast majority of crabs there was smaller than the minimum size limit. Later, NOAA scientists came up with data sufficient to determine the size at sexual maturity of brown king crab. This information provided the basis to lower the size limit from 6 1/2 to 5 1/2 inches in carapace width. Subsequently, the crab fishery has harvested 600,000 pounds of brown king crab worth $1.2 to $1.5 million in 1983 that would not have been harvested under earlier regulations.

A recent example of where fishery science led to new harvests in the pollock resource is the Gulf of Alaska. During groundfish surveys in 1980, NMFS scientists discovered large concentrations of pollock in the Shelikof Strait. This information was made available immediately to industry. Our fishing vessels initiated operations in 1981. Since then, U.S.

harvests in the Shelikof area have produced many millions of dollars in new revenues.

The value of scientific studies concerning the degradation of the marine environment is illustrated by the recent loss of $60 million in offshore shellfish resources due to eutrophication and reduced dissolved oxygen in the Mid-Atlantic Bight area. NOAA research on the effects of habitat degradation on fish production is necessary in order to make sound decisions to prevent future losses and mitigate those that have already occurred.

Fishery science also is critical to making the best use of those resources which are harvested. During the 1960's resource surveys indicated an extremely large standing crop of ocean quahog clams. At that time, the majority of the U.S. clam industry had little interest in the ocean quahog was reputed to be tough and to have a strong "iodine" taste. In the mid-1970's, the abundance of surf clams was inadequate to supply public demand. As a result of research on processing and handling, the industry was able to develop the ocean quahog resources as a substitute.

Research in improved preservation techniques has produced major economic benefits. One research effort determined that pollock could be frozen, held at low temperature and reprocessed without seriously altering functional and quality properties. This provided a basis for processors to develop and begin producing fish cakes and patties from Alaska pollock demonstrating that domestic utilization is feasible resulting ins sales of over $100,000 during the first year of production. The potential of expansion in this area is great. Increasing the per capita consumption by only 1/2-pound would have the effect of increasing domestic landings of pollock by 183,000 metric tons (less than 10 percent of the total pollock resource in Bering Sea and the Gulf of Alaska) for a total potential value of $100 million annually.

In another project, researchers developed improved methods for handling and packaging fresh trout in modified atmospheres to extend their refrigeration shelf life by 50 percent. This method permits trout growers to maintain prices for quality fish. in midwestern and east coast markets. With added experience, the potential benefits of the modified atmosphere shipping technique to domestic trout and salmon growers may exceed $10 million annually.

NOAA's proposed crippling of fishery science does not stop with it s laboratories. Once again, NOAA proposes to cut the Sea Grant program. This is the program which helps bring the scientific and technical expertise in our colleges and universities to bear on the problems facing our fisheries. This program directly supports our industry's productivity and efficiency.

The many individual cuts to fishery research and monitoring activities, the fishery research fleet, and the Sea Grant Program add up to the dismantling of a scientific effort to monitor and report on the condition of our fishery resources that has been underway for more than 100 years. These proposals would cripple federal and state efforts to manage these resources, and leave our industry without a sound scientific basis to operate. They should be rejected.

Fishery Management

Harvests must be controlled when necessary to prevent overfishing and to ensure that maximum benefits are derived from our fishery resources. The Institute believes that adequate public funding must be provided for these efforts.

The flexibility and responsiveness needed in fishery management is largely due to the regional nature of fishery regulations and the cooperation and participation of industry and state agencies in management decisions. This management system, however, is threatened by the proposed termination or reduction of support for state fishery programs and the Regional Fishery Management Councils. This funding should be restored.

Fishery Development

The Institute supports the continued use of receipts from the Saltonstall-Kennedy Act for fishery development. Since the 1950's import duties on fishery products have been used for development, marketing and scientific research. Development projects funded with these receipts have accelerated the growth of our industry and should be continued. An example is the national marketing program which has introduced lesser known and inexpensive seafood to the American consumer. Other important efforts which should be continued involve work to reduce overseas trade barriers and reduce the regulatory burdens on industry. Another important component of the fishery development program is the research conducted by NOAA's three technological laboratories in Gloucester, MA, Seattle, WA, and Charleston, SC.

Under Title XI of the Merchant Marine Act, federal loan guarantees are available for financing the construction or reconstruction of fishing vessels and shoreside facilities. The Institute is opposed to the proposed termination of this program.

CONCLUSION

The Committee's consideration of our comments is appreciated. The program areas discussed are vital. I urge the Committee to support NOAA's fishery programs to assure that our citizens benefit from the employment, food supply and revenue which can be generated from our fishery resource.

NATIONAL
NGLTF
GAY & LESBIAN
TASK FORCE

TESTIMONY

BY

KEVIN BERRILL
DIRECTOR, ANTI-VIOLENCE PROJECT
NATIONAL GAY AND LESBIAN TASK FORCE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM KEVIN BERRILL, DIRECTOR OF THE ANTI-VIOLENCE PROJECT OF THE NATIONAL GAY AND LESBIAN TASK FORCE, AMERICA'S OLDEST AND LARGEST NATIONAL GAY CIVIL RIGHTS ORGANIZATION. WE THANK YOU FOR THE OPPORTUNITY TO BRING TO THE SUBCOMMITTEE'S ATTENTION A PROBLEM OF GREAT CONCERN TO THE LESBIAN AND GAY COMMUNITY—THAT OF ANTI-GAY VIOLENCE. WE ARE HERE TODAY TO ASK THAT THIS SUBCOMMITTEE DIRECT THE DEPARTMENT OF JUSTICE TO ADDRESS ANTI-GAY VIOLENCE BY HOLDING A NATIONAL RESEARCH CONFERENCE ON THE PROBLEM, BY HIGHLIGHTING THE ISSUE IN ITS FORUMS AND PUBLICATIONS, AND BY FOCUSING ON LESBIAN AND GAY CONCERNS IN ITS PROGRAMS FOR VICTIMS OF CRIME.

BACKGROUND

AS YOU MAY KNOW, LAST OCTOBER THE HOUSE CRIMINAL JUSTICE SUBCOMMITTEE HELD A HEARING ON ANTI-GAY VIOLENCE. AT THE HEARING, WITNESSES FROM LAW ENFORCEMENT, CRIMINAL JUSTICE, PROFESSIONAL AND GAY ORGANIZATIONS TESTIFIED THAT ANTI-GAY VIOLENCE WAS A PERVASIVE PROBLEM, ONE THAT HAS BEEN SADLY EXACERBATED BY THE AIDS CRISIS.

WHAT IS ANTI-GAY VIOLENCE? WHAT ARE ITS CAUSES? WE DEFINE IT AS ANY VIOLENCE AGAINST PERSONS BECAUSE THEY ARE GAY OR LESBIAN OR PERCEIVED TO BE SO. IT IS MOTIVATED BY IRRATIONAL HATRED AND FEAR, AND BY THE PERCEPTION THAT GAY PEOPLE ARE EASY TARGETS, UNABLE TO FIGHT BACK OR UNWILLING TO RISK EXPOSURE BY REPORTING CRIMES AGAINST THEM TO THE AUTHORITIES. AS WITH OTHER CITIZENS, GAY PEOPLE ARE ALSO VICTIMS OF CRIMES NOT RELATED TO THEIR SEXUAL ORIENTATION. BUT REGARDLESS OF THE MOTIVATIONS FOR ATTACKS AGAINST THEM, GAY PEOPLE FACE UNIQUE PROBLEMS IN GETTING HELP AND RECEIVING JUSTICE.

GIVEN WIDESPREAD IGNORANCE ABOUT THE MAGNITUDE OF ANTI-GAY VIOLENCE, IN 1984 THE NATIONAL GAY AND LESBIAN TASK FORCE CONDUCTED A STUDY OF THE PROBLEM INVOLVING NEARLY 2,100 GAY MEN AND LESBIANS NATIONWIDE. AMONG THOSE SURVEYED, NEARLY ONE IN FOUR GAY MEN AND NEARLY ONE IN TEN LESBIANS REPORTED HAVING BEEN PUNCHED, HIT, KICKED OR BEATEN BECAUSE OF THEIR SEXUAL ORIENTATION. MORE THAN FORTY PERCENT HAD BEEN THREATENED WITH PHYSICAL VIOLENCE, AND MORE THAN NINETY PERCENT HAD EXPERIENCED SOME TYPE OF VICTIMIZATION FOR THE SAME REASON.

WE FOUND THAT ANTI-GAY VIOLENCE OCCURRED NOT ONLY ON THE STREET BUT ALSO IN OUR SCHOOLS, ON OUR CAMPUSES, AND IN OUR HOMES. NEARLY HALF THE GAY MALES AND NEARLY ONE FIFTH OF THE LESBIANS HAD BEEN HARASSED OR ATTACKED IN HIGH SCHOOL OR JUNIOR HIGH. ONE THIRD HAD BEEN VERBALLY OR PHYSICALLY ABUSED BY FAMILY MEMBERS. WE HAVE NO SURVEY DATA ON THE EXTENT OF ANTI-GAY MURDERS, OR

INCIDENTS PERPETRATED BY KLAN, NAZI, OR OTHER HATE GROUPS. NOR DO WE HAVE STATISTICS ON ANTI-GAY VIOLENCE IN PRISONS AND JAILS. BUT OUR FILES BULGE WITH CLIPPINGS ABOUT THESE AND OTHER TYPES OF INCIDENTS.

OUR STUDY HAS BEEN PRAISED BY SOCIOLOGISTS AND CRIMINOLOGISTS INCLUDING DR. MARVIN WOLFGANG, WHO IS WIDELY REGARDED TO BE ONE OF AMERICA'S MOST OUTSTANDING CRIMINOLOGISTS. DR. WOLFGANG PRAISED THE NGLTF STUDY AS "ADMIRABLY CAUTIOUS IN THE ANALYSIS OF DATA AND IN THE STYLE OF WRITING. THERE IS NO HYPERBOLE.... I APPLAUD THE EFFORT AND ENCOURAGE FURTHER RESEARCH SO THAT THE DIMENSIONS OF THE PROBLEM MAY BE KNOWN AND EFFORTS CAN BE MADE TO REDUCE THE PROBLEM."

RESEARCH BY OTHER ORGANIZATIONS HAS CLEARLY SUPPORTED NGLTF'S CONCLUSION THAT ANTI-GAY VIOLENCE AND VICTIMIZATION IS WIDESPREAD. STUDIES BY THE WISCONSIN GOVERNOR'S COUNCIL ON LESBIAN AND GAY ISSUES, THE PHILADELPHIA LESBIAN AND GAY TASK FORCE, THE MAINE CIVIL LIBERTIES UNION, AND OTHER GROUPS HAVE SHOWN SIMILAR HIGH RATES OF VICTIMIZATION. ONE PARTICULARLY DISURBING FINDING IN THE PHILADELPHIA SURVEY WAS THAT GAY PEOPLE IN THAT CITY WERE AT LEAST FOUR TIMES MORE LIKELY TO BE VICTIMS OF VIOLENT CRIMES THAN PERSONS IN THE GENERAL URBAN POPULATION.

NEXT WEEK, NGLTF WILL RELEASE A REPORT ON VIOLENCE AND VICTIMIZATION IN 1986. THE REPORT DOCUMENTS NEARLY 5,000 INCIDENTS--INCLUDING HARASSMENT, THREATS, VANDALISM, ASSAULT, ARSON AND MURDER--DOCUMENTED BY 41 ORGANIZATIONS IN 27 STATES. ALTHOUGH THIS FIGURE IS CONSIDERABLY MORE THAN DOUBLE THE NUMBER OF INCIDENTS REPORTED TO NGLTF IN 1985, IT STILL REPRESENTS ONLY THE TIP OF THE ICEBERG. ANTI-GAY EPISODES IN THE VAST MAJORITY OF U.S. TOWNS AND CITIES WERE NOT REPORTED TO NGLTF. AMONG THOSE ORGANIZATIONS THAT DID REPORT TO NGLTF, NONE CLAIMED TO KNOW ABOUT ALL OR EVEN MOST OF THE INCIDENTS THAT OCCURRED IN THEIR COMMUNITIES.

IN SOME COMMUNITIES THERE ARE INDICATIONS THAT ANTI-GAY VIOLENCE IS NOT ONLY PERVASIVE, BUT INCREASING. AMONG THE GROUPS REPORTING SUCH VIOLENCE TO NGLTF IN 1986, 37% CLAIMED THAT ANTI-GAY INCIDENTS IN THEIR AREAS WERE MORE FREQUENT IN 1986 THAN IN 1985. TWO OF THE GROUPS THAT NOTED AN INCREASE IN VIOLENCE LAST YEAR ARE THE NEW YORK CITY GAY AND LESBIAN ANTI-VIOLENCE PROJECT (NYCAVP) AND THE PHILADELPHIA LESBIAN AND GAY TASK FORCE (PLGTF) THE NYCAVP LOGGED A STAGGERING 83% INCREASE IN ITS CASELOAD, WHILE THE PLGTF DOCUMENTED A 27% INCREASE IN REPORTS. SAN FRANCISCO'S COMMUNITY UNITED AGAINST VIOLENCE (CUAV), WHICH RECORDED A 50% INCREASE IN VIOLENCE IN 1985 OVER THE PREVIOUS YEAR, DOCUMENTED A 14% INCREASE IN PHYSICAL ATTACKS IN 1986.

THERE CAN BE LITTLE DOUBT THAT FEAR AND HATRED ASSOCIATED WITH AIDS HAS CONTRIBUTED TO THE PERVASIVENESS OF ANTI-GAY VIOLENCE. AMONG THOSE GROUPS REPORTING TO NGLTF IN 1986, 63% INDICATED THAT "AIDS BACKLASH" HAD FOSTERED ANTI-GAY VIOLENCE IN THEIR COMMUNITIES. ACCORDING TO THE NEW YORK CITY GAY AND LESBIAN ANTI-VIOLENCE PROJECT, AIDS-RELATED EPITHETS ACCOMPANIED APPROXIMATELY ONE QUARTER OF THE TOTAL NUMBER OF INCIDENTS REPORTED TO IT.

THE NIGHTMARE FOR ANTI-GAY VIOLENCE VICTIMS DOES NOT END WHEN THEIR ASSAILANTS HAVE FINISHED WITH THEM. CURRENT RESEARCH INDICATES THAT THE VAST MAJORITY—POSSIBLY MORE THAN 80%—NEVER MAKE A REPORT. THOSE WHO DO STEP FORWARD ARE OFTEN REVICTIMIZED BY THE VERY AGENCIES RESPONSIBLE FOR PROTECTING AND ASSISTING THEM. WHILE MANY POLICE OFFICERS ARE COURTEOUS AND HELPFUL, THEY ARE OFTEN DESCRIBED BY GAY VICTIMS AS INDIFFERENT, HOSTILE OR EVEN PHYSICALLY ABUSIVE. MANY ANTI-GAY VIOLENCE CASES CAN ALSO BE RECALLED WHEN THE CRIMINAL JUSTICE SYSTEM HAS FAILED TO VIGOROUSLY PROSECUTE AND PUNISH THE ASSAILANTS. EVEN WHEN PROSECUTORS ARE CARING AND COMPETENT, CONVICTIONS IN SUCH CASES ARE OFTEN HARDER TO OBTAIN. AS WITH WOMEN WHO HAVE BEEN RAPED, GAY VICTIMS ARE FREQUENTLY BLAMED FOR CRIMES AGAINST THEM AND OFTEN FEEL THAT IT IS THEY—RATHER THAN THEIR ASSAILANTS—WHO ARE ACCUSED AND STANDING TRIAL. WHILE A FEW LAW ENFORCEMENT AGENCIES HAVE TAKEN STEPS TO ADDRESS THESE ISSUES, SUCH EFFORTS ARE FEW AND FAR BETWEEN.

THE OFFICIAL RESPONSE TO ANTI-GAY VIOLENCE:

TO DATE, VIRTUALLY NOTHING HAS BEEN DONE BY THE FEDERAL GOVERNMENT TO STUDY OR REMEDY THIS PROBLEM. INDEED, THE FEDERAL RESPONSE TO ANTI-GAY VIOLENCE REFLECTS MUCH THE SAME DENIAL AND NEGLECT THAT WAS EVIDENT DURING THE INITIAL STAGES OF THE AIDS CRISIS. NOWHERE HAS THIS NEGLECT BEEN MORE GLARING AND WILLFUL THAN AT THE DEPARTMENT OF JUSTICE: WE HAVE APPEALED FOR ACTION TO THE ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE, THE OFFICE FOR VICTIMS OF CRIME, AND THE NATIONAL INSTITUTE OF JUSTICE, BUT TO NO AVAIL. LAST YEAR, THE NATIONAL INSTITUTE OF JUSTICE INFORMED NGLTF IN WRITING THAT "ANTI-GAY VIOLENCE IS INCREASING, AND IN THAT REGARD REPRESENTS A PROBLEM THAT SHOULD BE ADDRESSED," BUT NIJ HAS DONE NOTHING TO ADDRESS IT. EVEN WORSE, THE OFFICE FOR JUSTICE PROGRAMS HAS AT TIMES ACTUALLY SOUGHT TO PREVENT ITS GRANT RECIPIENTS FROM ADDRESSING THE LEGITIMATE CONCERNS OF LESBIAN AND GAY CRIME VICTIMS.

RECOMMENDATIONS:

MR. CHAIRMAN, IN VIEW OF THE JUSTICE DEPARTMENT'S LACK OF RESPONSIVENESS TO THIS ISSUE, WE ASK THIS SUBCOMMITTEE TO MANDATE THAT THE FOLLOWING STEPS BE TAKEN TO ADDRESS THE PROBLEM:

1) **NIJ RESEARCH CONFERENCE ON ANTI-GAY VIOLENCE.** WE ASK THAT YOUR SUBCOMMITTEE DIRECT THE NATIONAL INSTITUTE OF JUSTICE TO HOLD A NATIONAL CONFERENCE THAT WOULD BRING TOGETHER RESEARCHERS AND EXPERTS IN LAW ENFORCEMENT, CRIMINAL JUSTICE, AND RELATED FIELDS TO SUMMARIZE EXISTING KNOWLEDGE ON ANTI-GAY VIOLENCE AND SET A RESEARCH AGENDA. RESEARCH IS NEEDED TO DOCUMENT THE FREQUENCY OF VIOLENCE AND THE CHARACTERISTICS OF PERPETRATORS, TO EVALUATE THE TREATMENT OF GAY AND LESBIAN CRIME VICTIMS BY THE CRIMINAL JUSTICE SYSTEM, AND TO EVALUATE THE EFFECTIVENESS OF VARIOUS PROGRAMS TO PREVENT VIOLENCE.

A FEW OF THE RESEARCH QUESTIONS THAT DESERVE CONSIDERATION ARE: WHEN AND WHERE IS ANTI-GAY VIOLENCE MOST LIKELY TO OCCUR? HOW DOES THE TREATMENT OF GAY AND LESBIAN VICTIMS BY LAW ENFORCEMENT, CRIMINAL JUSTICE AND VICTIM SERVICE AGENCIES DIFFER FROM THAT OF HETEROSEXUAL VICTIMS? WHAT CAN BE DONE TO ENSURE THAT GAY CRIME VICTIMS RECEIVE FAIR AND EQUAL TREATMENT? GIVEN THE RISING NUMBERS OF HOMICIDES INVOLVING GAY MALE VICTIMS, HOW CAN LAW ENFORCEMENT IMPROVE ITS ABILITY TO IDENTIFY AND INVESTIGATE SUCH CRIMES? ANSWERS TO THESE AND OTHER QUESTIONS WILL MAKE A CRITICAL DIFFERENCE IN THE OFFICIAL RESPONSE TO ANTI-GAY VIOLENCE AND THE TREATMENT OF SURVIVORS.

2) **HIGHLIGHT SUCCESSFUL LOCAL ANTI-VIOLENCE PROGRAMS.** WE ALSO ASK THAT THIS SUBCOMMITTEE DIRECT THE NATIONAL INSTITUTE OF JUSTICE TO SPECIFICALLY ADDRESS GAY AND LESBIAN AND OTHER MINORITY CONCERNS IN ITS FORA AND PUBLICATIONS. THERE ARE SEVERAL GROUNDBREAKING PROGRAMS TO MEET THE CHALLENGE OF HATE VIOLENCE AND TO IMPROVE POLICE RELATIONS WITH MINORITY COMMUNITIES. NIJ COULD DO MUCH MORE TO ENCOURAGE THEIR REPLICATION. FOR EXAMPLE, POLICE FORCES IN BOSTON, NEW YORK AND PHILADELPHIA NOW HAVE SPECIAL BIAS UNITS AND PROTOCOLS TO INVESTIGATE CRIME MOTIVATED BY RACIAL, ETHNIC, RELIGIOUS AND ANTI-GAY PREJUDICE. A GROWING NUMBER OF POLICE DEPARTMENTS HAVE APPOINTED LIAISONS TO THE GAY COMMUNITY AND OTHER MINORITY COMMUNITIES, AND HAVE ESTABLISHED SPECIAL SENSITIVITY TRAINING PROGRAMS. IN SEATTLE AND NEW YORK CITY TASK FORCES AND COUNCILS INVOLVING BOTH POLICE AND GAY PEOPLE NOW ADDRESS ISSUES OF MUTUAL CONCERN. ATLANTA, NEW YORK, SAN FRANCISCO, AND OTHER CITIES NOW RECRUIT OPENLY GAY AND LESBIAN POLICE OFFICERS. SOME DEPARTMENTS HAVE ADOPTED SOUND AIDS POLICIES THAT PROTECT POLICE OFFICERS AND ALSO REDUCE IRRATIONAL FEAR THAT LEADS TO UNPROFESSIONAL BEHAVIOR.

WHERE THESE AND OTHER PROGRAMS ARE TAKING PLACE, TRUST AND COOPERATION BETWEEN GAYS AND THE POLICE ARE INCREASING AND THE OFFICIAL RESPONSE TO ANTI-GAY VIOLENCE HAS MARKEDLY IMPROVED. THESE EFFORTS DESERVE NATIONAL ATTENTION, AND BY HIGHLIGHTING THEM NIJ FORA AND PUBLICATIONS COULD HELP LOCAL POLICE DEPARTMENTS AVOID "REINVENTING THE WHEEL."

3) **ADDRESS THE NEEDS OF LESBIAN AND GAY CRIME VICTIMS.** FINALLY, WE ASK THAT THIS SUBCOMMITTEE DIRECT THE JUSTICE DEPARTMENT TO ADDRESS IN ITS PROGRAMS

FOR CRIME VICTIMS THE CONCERNS OF LESBIAN AND GAY PEOPLE AND MEMBERS OF OTHER MINORITY POPULATIONS. TO THEIR CREDIT, THE REAGAN ADMINISTRATION AND CONGRESS HAVE STRONGLY PROMOTED RIGHTS AND SERVICES FOR VICTIMS OF CRIME. BUT THE RISING TIDE OF CONCERN FOR VICTIMS IS NOT RAISING ALL BOATS. INDEED, MANY OF THE POPULATIONS MOST AT RISK FOR VIOLENCE ARE BEING OVERLOOKED AND UNDERSERVED.

THIS NEGLECT COULD BE REMEDIED IF JUSTICE DEPARTMENT PROGRAMS TO TRAIN VICTIM SERVICE, LAW ENFORCEMENT, AND CRIMINAL JUSTICE PROFESSIONALS INCLUDED A FOCUS ON OVERLOOKED AND UNDERSERVED VICTIM POPULATIONS—INCLUDING LESBIANS AND GAY MALES, PEOPLE OF COLOR, THE DISABLED, THE ELDERLY, RECENT IMMIGRANTS, SURVIVORS OF HOMICIDE VICTIMS, HOSTAGES, VICTIMS OF CATASTROPHIC PHYSICAL INJURIES, AND VICTIMS OF DRUNK DRIVERS. AT THE VERY LEAST, WE REQUEST THAT THE OFFICE OF JUSTICE PROGRAMS BE ASKED TO REFRAIN FROM CENSORING THOSE GRANT RECIPIENTS SEEKING TO ADDRESS THE LEGITIMATE CONCERNS OF GAY VICTIMS IN PROGRAMS AND PUBLICATIONS.

WE BELIEVE THAT THE COST OF OUR PROPOSALS FOR ACTION IS QUITE SMALL, ESPECIALLY IN LIGHT OF THE TERRIBLE TOLL OF ANTI-GAY VIOLENCE—IN PAIN, FEAR, ANGUISH, AND LIVES LOST. INDEED, THE COST OF SILENCE AND INDIFFERENCE IS FAR GREATER, AS BOTH UNDERMINE ALL HUMAN LIFE AND LIBERTY.

IN CLOSING, MR. CHAIRMAN, IT IS OUR HOPE THAT THIS SUBCOMMITTEE WILL FOSTER ACTION THAT WILL HELP ENABLE ALL AMERICANS TO LIVE FREE FROM VIOLENCE AND FEAR. ONCE AGAIN, WE THANK YOU FOR THE OPPORTUNITY TO BRING OUR CONCERNS BEFORE YOU TODAY.

NGLTF

Anti-Gay Violence, Victimization & Defamation in 1986

SUMMARY

Anti-gay violence, a longstanding problem in America, continued to be widespread in 1986. Four thousand nine hundred and forty-six (4,946) acts of anti-gay violence and victimization were reported from across the United States to the National Gay and Lesbian Task Force (NGLTF) last year. This figure is considerably more than double the 2,042 incidents reported to NGLTF in 1985, and includes acts ranging from verbal abuse to homicide.

Documented by 41 organizations in 27 states, the National Gay/Lesbian Crisisline, and NGLTF, **these episodes account for only a very small fraction of the actual number that occurred during the past year.** Some of the organizations reporting to NGLTF observed that anti-gay violence occurred more frequently in 1986 than in 1985, and most indicated that fear and hatred associated with AIDS had worsened the problem.

Social Context: The rising tide of reported anti-gay violence occurs at a time of widespread harassment and attacks against Asian, Black, Hispanic and Jewish Americans. The killing of a Black teenager in Howard Beach, the organized racist violence and intimidation in Forsyth County, growing attacks upon Asian immigrants and their businesses, bombings and bomb threats against family planning clinics, and hundreds of documented anti-Semitic incidents--all suggest that tolerance of individual and group differences is on the decline in the United States.

Causes of Anti-gay Violence: The incidents documented in this report--and countless other attacks--are motivated by irrational fear and hatred and by the perception that gay people are "easy targets," unable to fight back and unwilling to risk exposure by reporting crimes against them to the police. Unfounded and persistent notions that gay and lesbian people are sick, sinful, or predatory have fostered the hostility that leads to anti-gay violence, and have slowed official recognition and response to the problem. The fact that lesbian and gay people are subject to discrimination in employment, housing, child custody and other areas deters them from reporting to the authorities, and further increases their vulnerability to crime and violence.

Anti-gay violence is a violation not only of the individual who is attacked, but of the entire gay and lesbian community as well. As with other hate crimes, such violence is intended to frighten and isolate an entire class of people, and to discourage their visibility. Despite the clear connections between anti-gay violence and crimes motivated by racial, ethnic, and religious prejudice, some efforts initiated in 1986 to combat hate violence ignored lesbian and gay concerns.

Incident Accounts: Anti-gay attacks reported to NGLTF in 1986 included the following:

o On February 26 in Morristown, New Jersey, three men beat and slashed a gay man, extinguished a cigarette in his face, tied him to the back of a truck, and drove the truck--dragging him along a dirt road. According to the Associated Press, Superior Court Judge Daniel Coburn stated at the sentencing of one of the assailants that "violence against others based on their being different is an affront to all civilized people."

o On September 6 in Portland, Maine, an assailant called three women anti-lesbian epithets and assaulted them, leaving one of the victims with a fractured jaw, several broken teeth, and bruised ribs. The other victims also sustained injuries that required medical attention.

o On May 29 in Sacramento, a prominent gay activist and lobbyist for the Quaker-sponsored Friends Committee was called a "faggot" and knifed in the back near his home by two young male assailants. No suspects were ever apprehended.

o On February 8 in Philadelphia, two gay college students were called "faggots" and "pretty boys" and beaten by several assailants. When the police arrived, they found one victim with his arm around his shaking and bloodied friend. Accusing the two victims of having provoked the attack by "sitting like that," the police refused to take a report.

Anti-gay Defamation: In addition to an unprecedented number of reported anti-gay incidents, there were numerous offensive and inflammatory statements against lesbians, gay men, and people with AIDS by highly placed public officials, media personalities, and organizations ranging from the Ku Klux Klan to the Vatican.

Survey Research: Surveys of gay and lesbian people in Alaska and at Yale University added to the growing body of anti-gay violence data. All anti-gay violence studies conducted to date strongly indicate that the problem is pervasive, with high rates of victimization documented in rural, urban and suburban areas.

Official Response: Despite lobbying efforts by NGLTF, federal agencies concerned about crime, such as the National Institute of Justice, declined to study or remedy the problem. However, in October the U.S. House of Representatives Subcommittee on Criminal Justice acknowledged the seriousness of anti-gay violence by holding a hearing on the issue. While most state and local governments failed to take appropriate action against anti-gay violence, the California Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence issued a groundbreaking report on hate violence that included recommendations to curb attacks against the gay community. At the local level, gay and lesbian groups initiated or expanded efforts to document violence and assist victims.

ABOUT THE NGLTF ANTI-VIOLENCE PROJECT

The NGLTF Anti-violence Project exists to 1) promote an appropriate official response to anti-gay violence, 2) ensure that gay and lesbian victims of crime are treated fairly and compassionately by law enforcement, criminal justice, and social service agencies, 3) assist local communities in organizing against anti-gay prejudice and violence, and 4) raise public awareness about anti-gay violence and transform that awareness into support for policies and programs that protect lesbian and gay people.

REPORTED INCIDENTS

In 1986, 4,946 acts of anti-gay violence and victimization were documented by NGLTF, the National Gay/Lesbian Crisisline, and forty-one organizations representing communities in 27 states. Directed against persons (or their property) because they are gay or lesbian or perceived to be so, these incidents included verbal harassment, intimidation, assault, police abuse, vandalism, arson, bomb threats and homicide. The reported violence was perpetrated by lone individuals, gangs, and organized hate groups, including the Ku Klux Klan and neo-Nazi organizations. The incidents occurred in a variety of settings--on the street, in school, on campus, in jail and prison, and even in the home.

A breakdown of reported incidents is provided below:

	Total No. of incidents	% of total
Verbal harassment or threats of violence:*	3,473	70%
Physical assaults/objects thrown:	732	15%
Police verbal/physical abuse:	160	3%
Police harassment/negligence:**	250	5%
Vandalism:	191	4%
Bomb threats:	50	1%
Arson/bombings:	10	-
Homicide:***	80	2%
TOTAL	**4,946**	**100%**

The above statistics do not measure the full extent of anti-gay violence and victimization that occurred in 1986; indeed, these numbers represent only a very small fraction of the actual number of incidents that occurred nationwide. Anti-gay episodes in the vast majority of U.S. towns and cities were not reported to NGLTF. Among those organizations that did report to NGLTF none claimed to know about all or even most of the incidents that occurred in their communities. (See page 16 for a list of organizations that provided documentation to NGLTF.)

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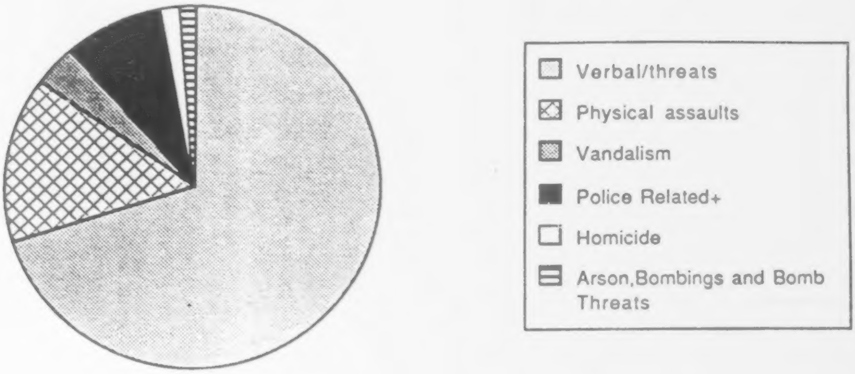
* Includes verbal abuse, threatening notes, telephone harassment, menacing actions, etc.

** Includes police entrapment, unequal enforcement of the law, deliberate mishandling of cases, failure to take reports, etc.

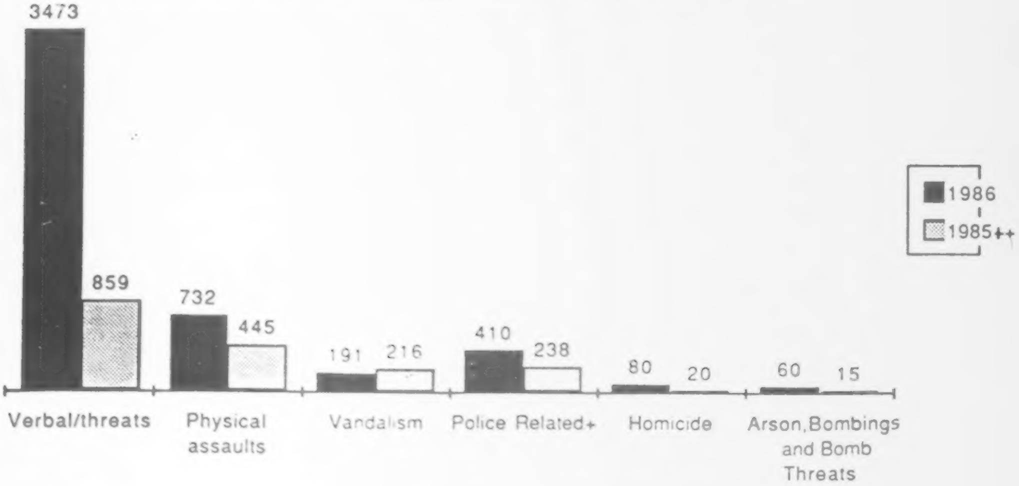
*** With homicides it is not always possible to determine whether anti-gay prejudice was a motivating factor. According to local groups, victims' homosexual orientation appeared to be a relevant factor in all cases reported; a number clearly involved anti-gay prejudice.

This report does not document the extent of gay and lesbian youth and adult suicide, which although self-inflicted, is frequently a response to living in a society which teaches gay and lesbian people to hide and hate themselves. Nor does it include countless thousands of discriminatory--and often legally sanctioned--acts against gay people because of their sexual orientation.

Reported Incidents of Anti-Gay Violence and Victimization: 1986



Reported Anti-Gay Incidents:1985 and1986 Compared



+ Includes police verbal and physical abuse, harassment, entrapment and negligence

++ Also in 1985, there were 215 unclassified incidents

Reported Increase in Victimization

Although there were slightly fewer organizations reporting to NGLTF in 1986 than in 1985, the number of reported incidents more than doubled, from 2,042 to 4,946. Because there is no collection of anti-gay violence statistics throughout most of the U.S. and because most existing local data are not gathered in a systematic way, it is impossible to know whether this total represents an increase in the actual level of violence, or improved documentation of incidents, or both. Among local groups reporting to NGLTF, perspectives varied as to whether the problem had worsened last year: 37% (15) indicated that incidents were more frequent in 1986 than 1985; 44% (18) were unsure whether an increase had occurred, and 10% (4) noted that anti-gay violence had not increased. Ten percent (4) gave no opinion.

Two of the organizations that documented an increase in reports of violence are the New York City Gay and Lesbian Anti-Violence Project (NYCAVP) and the Philadelphia Lesbian and Gay Task Force (PLGTF). The NYCAVP logged a startling 83% increase in its victim caseload, while the PLGTF noted a 27% increase in victims reporting to its hotline. San Francisco's Community United Against Violence (CUAV), which had documented a 50% increase in anti-gay violence in 1985 over the previous year, recorded a 14% increase in physical attacks in 1986. In Boston--where local groups did not report any incidents to NGLTF in 1985—135 incidents were documented last year, some of which received national as well as local attention.

AIDS, the Hardwick Decision and Anti-Gay Violence

As in 1985, "AIDS backlash" contributed to the problem of anti-gay violence in 1986. Reference to AIDS was made by perpetrators in 14% (681) of the total number of incidents, including 5% of the physical assaults. According to the New York City Gay and Lesbian Anti-Violence Project, AIDS-related epithets accompanied approximately one quarter of the total incidents reported to it. While 63% (26) of the local groups reporting to NGLTF believe that fear and hatred associated with AIDS was a motivating factor in anti-gay violence, it is unclear whether and to what extent "AIDS backlash" is distinct from—or another manifestation of--anti-gay prejudice.

In addition to AIDS, other widely publicized events that negatively impacted the gay community helped to foster homophobic harassment or violence. For example, in 1986 groups in 8 localities observed more harassment following the Supreme Court's decision upholding Georgia's sodomy law (*Bowers v. Hardwick*). In Washington, D.C., local gay and lesbian organizations, including the National Gay and Lesbian Task Force, received significantly more harassing and threatening phone calls in the wake of publicity around the Supreme Court decision and the Justice Department's opinion permitting discrimination based on irrational fear of AIDS contagion. According to the *Washington Blade*, a Washington, D.C.-based gay newsweekly, this trend was observed in other U.S. cities as well.

ANTI-GAY VIOLENCE SURVEYS

Two studies published in 1986 further demonstrated that anti-gay violence is widespread. A study of Alaska's gay community by Identity Inc., a community-based service organization, and of Yale's gay student population by Gregory Herek, Ph.D. added to the growing body of data on the subject. The Yale and Alaska findings are summarized below; results of anti-gay violence studies released in 1985 are highlighted in Appendix A.

SUMMARY OF ALASKA STUDY

Victimization experienced *in Alaska only* because of sexual orientation:
Total sample size: 734 (411 females, 323 males)

Verbal abuse:	58%	Police harassment:	8%
Physical violence:	11%	Property damage:	12%
Threats of physical violence:	24%	Experienced some form of harassment/violence	61%
Followed or chased:	14%		

SUMMARY OF YALE UNIVERSITY STUDY

Victimization experienced *at Yale only* because of sexual orientation. Total sample size: 215 (117 males, 93 females, 5 not indicated)

Verbal insults:	65%	Punched, hit, kicked, beaten:	5%
Threats of physical violence:	25%	Sexually harassed/assaulted:	12%
Property damaged/destroyed:	10%	Know others who have been victimized:	76%
Objects thrown:	19%	Anticipate future victimization at Yale:	92%
Followed or chased:	25%	Have feared victimization:	57%
Spat upon:	3%		

The results highlighted above are somewhat lower than that of most other anti-gay violence studies, in part because the figures reflect only those incidents which occurred in a specific context, e.g. while studying or teaching at Yale or while living in Alaska. In the Identity, Inc. study, respondents' average length of residence in Alaska was 10 years; in the Yale study, most of the respondents were undergraduates, and thus were living at Yale for four years or less.

ANTI-GAY DEFAMATION

In addition to an unprecedented number of documented attacks in 1986, there were numerous offensive and inflammatory statements against the gay and lesbian community and people with AIDS by leaders in government, entertainment, and religion. Indeed, the frequency and vitriol of homophobic remarks by public figures in 1986 may have surpassed that of previous years, including the dark days of Anita Bryant's anti-gay crusades. Although homophobic public statements are often dismissed as "mere words," such behavior is not only offensive to gay people and many others, but also creates an atmosphere of intolerance that opens the way to violence.

Examples of derogatory statements include a joke in public by Secretary of State George Schultz about giving AIDS to Libyan leader Moammar Gadhafi, a comment by New York radio talk show host Bob Grant that he would like to "beat the shit out of" gay men and lesbians, a proposal by columnist William F. Buckley to tattoo people infected with the AIDS virus, and jokes about beating "fags" by Howard Stern, a nationally syndicated disc jockey. Various defamatory remarks are highlighted in the Narratives section on page 14.

ORGANIZING EFFORTS

NGLTF's National Response

Lobbying efforts: In response to mounting attacks, the gay and lesbian community took major steps in 1986 to organize against violence and to foster governmental action. At the urging of NGLTF, the House of Representatives Criminal Justice Subcommittee held a hearing in October, which included witnesses from law enforcement, criminal justice, and mental health fields, as well as from gay organizations. Witnesses testified that the problem is serious, and urged that immediate action be taken to study and remedy it.

At the hearing, Kevin Berrill, NGLTF's Anti-Violence Project Director testified that the National Institute of Justice (NIJ) had acknowledged in a letter to him that "anti-gay violence is growing and in that regard represents a problem that should be addressed."[1] Yet despite repeated urging by NGLTF, California Attorney General Van de Kamp and San Francisco Police Chief Frank Jordan, NIJ declined to undertake a study of the problem. Berrill also testified that the Centers for Disease Control Violence Epidemiology Branch had acknowledged to him in writing that "the increased risk of violence faced by gays is an important problem."[2]

Since October's Congressional hearing, a coalition of gay, civil rights, professional, and religious organizations has formed to promote government initiatives to study anti-gay violence, including a national research conference on the problem and the compilation of official statistics on such crimes. At present, there is a bill before Congress (H.R. 993) that would mandate the collection of data on crimes motivated by racial, ethnic, and religious bigotry. Efforts are underway to amend the bill so that it also includes a provision to document anti-gay crimes.

Law Enforcement and Victim Services: At the request of NGLTF, the issue of anti-gay violence was also recognized by the U.S. Conference of Mayors, which invited Seattle Police Chief Patrick Fitzsimons to its national meeting to discuss his department's programs to improve local police/gay community relations. The growing acknowledgement in the victims' movement of gay and lesbian concerns was reflected by increased visibility of the issue at victims' conferences and by the election of NGLTF's Berrill to the board of directors of the National Organization for Victim Assistance. In order to educate the gay community and victim service providers about anti-gay violence, NGLTF published a new booklet in 1986, entitled Dealing With Violence: A Guide for Gay and Lesbian People.

Coalition Efforts: While some organizations concerned with hate crimes included a focus on anti-gay violence in 1986, others did not. Last summer, NGLTF and the National Coalition of Black Lesbians and Gays were denied permission to bring a gay perspective to a national conference on violence and prejudice in America. Sponsored by the National Institute Against Prejudice and Violence (NIAPV)--a Baltimore-based organization established to address crimes motivated by racial, ethnic, and religious bigotry--the scope of the conference was limited to the organization's mandate. Since then, NGLTF has met with the NIAPV board of directors, and formally asked the organization to broaden its focus to include crimes motivated by anti-gay prejudice. A decision is pending.

Also last year, NGLTF joined the Center for Democratic Renewal (CDR, formerly the National Anti-Klan Network) as an affiliate member. Both CDR and NGLTF agreed to share information on organized hate group activity against the gay and lesbian community. In addition, the Human Rights Resource Center, a national organization that promotes human rights programs in education and law enforcement, provided assistance to numerous gay organizations in educating law enforcement agencies about gay and AIDS-related issues.

Media Education: After major educational efforts in 1986 by NGLTF and other organizations, the national television and print media focused significant attention to anti-gay violence for the first time. The issue was highlighted in major newspapers, including the Los Angeles Times, the New York Daily News, the New York Times and USA Today. In addition, the issue was covered on ABC's 20/20, major network evening news programs, and national televison talk shows including Phil Donahue, ABC's Good Morning America, and the Oprah Winfrey Show.

State and Local Response

Efforts by local and state governments and law enforcement agencies to respond to anti-gay violence were few and far between last year. While several states undertook initiatives to combat crimes motivated by bigotry—including the establishment of task forces to study the problem and the introduction of legislation to combat it—a number of these efforts ignored violence against the lesbian and gay community. For example, the Ohio legislature passed a law that increased penalties for vandalism or harassment based on an individual's race, color, religion, or ethnic heritage. The bill, which was backed by a wide range of religious and civil rights groups, excluded incidents based on anti-gay prejudice. At present most state laws that address hate crimes ignore anti-gay violence.

On a positive note, the **California Attorney General's Commisson on Racial, Ethnic, Religious and Minority Violence** issued a groundbreaking report on crimes motivated by bigotry, including anti-gay violence. The Commission report examined the wide scope of hate crimes in California and recommended statewide hate crime reporting, a civil rights statute with criminal penalties for bias crimes, victim assistance programs for victims of hate violence, law enforcement and criminal justice training, and education to address the prejudice that leads to violence.

On the local level, the **Philadelphia Police Department** announced the formation of its new Conflict Prevention/Resolution Unit, which will track and investigate crimes directed against individuals because of their sexual orientation, race, ethnicity, or religion. In **Boston**, gay activists and local officials pressed the police department to hire openly gay police officers, improve gay sensitivity training, and expand the focus of its bias crime investigation unit to include anti-gay violence. Despite vigorous protest from the Georgia Peace Officers Association, **Atlanta Public Safety Commissioner George Napper** announced that the police department would actively recruit gay men and lesbians by advertising in local gay newspapers.

Also in 1986, agencies serving victims of anti-gay violence continued to grow in number and size. Boston, Atlanta, and Minneapolis joined **New York City, San Francisco**, and Philadelphia in forming projects to serve gay victims and document violence. Efforts to document the problem were also initiated in **North Carolina, Indiana, Seattle,** and elsewhere. In recognition of the fact that gay and lesbian people are also victims of domestic violence, **New York State** awarded a $40,000 grant to the New York City Gay and Lesbian Anti-Violence Project to provide services to battered lesbians and gay men. In **San Francisco**, the United Way granted the Community United Against Violence (CUAV), a gay victim service agency, a $24,000 membership award which will be subject to renewal each year. CUAV is the first gay anti-violence program ever to receive such an award from the United Way.

Justice Denied: Gays and the Criminal Justice System

While some gay victims won victories in the courts, in many areas the criminal justice system failed to adequately prosecute and punish anti-gay crimes. As with victims of rape, gay and lesbian victims are often blamed for crimes against them, and confront prejudice from prosecutors, judges and juries. In a number of cases, the "gay advance" or "homosexual panic" defense resulted in lenient sentences or acquittals for those charged with assaulting or murdering gay men.

For example, in February, 1986, in Kalamazoo, MI, a defendant charged with killing a gay man with a sledge hammer was acquitted after the defense argued that the killing was done in defense of a sexual advance. But according to the Kalamazoo Gazette, the prosecution charged that the defendant "kicked this man [the victim] mercilessly until blood sprayed from his face" and left him unconscious only to return an hour later with another youth to "finish off" the victim. Following the verdict, Judge Robert Borsos said to the jury, "If this had not been a jury trial, my decision as judge would have been different than yours... I would have found first-degree murder." (Kalamazoo Gazette)

Increasingly, defense attorneys have exploited fear about AIDS to help win acquittals in gay-bashing cases. According to the Washington Blade, a representative of the San Francisco District Attorney's office complained last June that the lawyer for a defendent charged with murdering a gay man warned the jury not to touch the murder weapon because it was still covered with the victim's blood and might transmit AIDS. Observers of the proceeding also said the defense stereotyped gay men as trying to prey on boys. The defendant—who confessed to stabbing the victim 95 times—was acquitted by the jury of murder; the jury was deadlocked on the manslaughter charge.

Also in 1986, gay people and their loved ones fought back through the civil court system. After surviving a brutal anti-gay beating by two high school students, Ed Hassell, a Washington, D.C. computer consultant, won a $28,400 civil damages award against his assailants. In addition, the parents of Charlie Howard, jointly filed a civil suit for $688,000 against the families of the three young men who killed their son. Howard was thrown by his assailants over a bridge to his death in Bangor, Maine in July, 1984.

NARRATIVES

While the data in this report help to quantify the problem of anti-gay violence, they do not convey the suffering by the victims and the larger lesbian and gay community. In order to add dimension to the statistics, a number of anti-gay incidents are chronicled on the following pages.

Assaults

In 1986, 732 anti-gay assaults were documented, involving weapons ranging from fists and rocks to knifes, guns, and nunchucks.

o In Boston, a gay man leaving a local gay bar was abducted by three assailants and subsequently raped with bottles, lighted matches, and other implements. The assailants repeated to the victim that "this is what faggots deserve." (Fenway Community Health Center)

o In Des Moines, two assailants wielding an ax and a bat attacked a heterosexual man who they mistakenly perceived to be gay. The victim sustained a broken neck and multiple wounds. (Des Moines Coalition)

Homicides

Eighty homicides involving gay victims were documented in 1986, including strings of killings in New York, Minneapolis, Atlanta and San Francisco. A striking aspect of many of these murders is their extreme brutality.

o In Stockton, California, a widely known and well loved gay minister was found dead in the trunk of his car in February. His skull was crushed, his throat was slashed, and he had suffered multiple stab wounds in his chest. (Stockton Metropolitan Community Church)

o In July, the bodies of two pre-operative transexuals were found in a ravine fifteen miles north of Philadelphia. The two men, who were dressed in women's clothes, were badly beaten, shot, and dismembered before their bodies were soaked in gasoline and set on fire. (Philadelphia Gay News)

Incidents at schools and colleges

In response to increased visibility of gay and lesbian students on campus, there has been an unprecedented number of anti-gay incidents, ranging from offensive graffitti to death threats and assaults.

o Last October in North Dakota, a Jamestown College student punched a gay man in the face four times, alleging that the victim looked at him and touched him on the shoulder at a homecoming dance. Stating that there was no justification for the attack, the judge gave the assailant a suspended sentence and fined him $100. (Another Voice)

o In a three month period last year, the Ames/Iowa State University Gay and

Lesbian Information Line logged 133 harassing and threatening calls, including a threat that a gay dance would "turn into a bloodbath." (Gays and Lesbians of Ames)

o At Lehigh University, a student publication printed an ad that read "Tired of herpes? Try AIDS." The ad stated that readers could get AIDS from the head of the university gay organization. (Lesbians and Gays at Lehigh)

Attacks against lesbian and gay establishments

Since the early 1970's hundreds of attacks against gay institutions have occurred, including the arson of eighteen Metropolitan Community Churches, a Christian denomination oriented to the gay and lesbian community. In 1986, lesbian and gay establishments--including bars, community centers, and churches—continued to be the target of bomb threats, vandalism or arson.

o In July, a 25 year old Maine man was arrested and charged with arson and reckless conduct for allegedly setting off a tear gas cannister in a gay bar in Ogunquit, a beach resort south of Portland. The cannister exploded in the crowded bar causing 35 people to seek hospital treatment for smoke inhalation and eye irritation. According to an Ogunquit police official, the act caused a "complete panic situation" which could have caused "loss of life." (Washington Blade)

o In Phoenix, in a one night period, a gay bar was firebombed, two cars were set on fire and one car at another bar was set on fire. (USA Today)

o In July, two bricks smashed through the windows of Giovanni's Room, a Philadelphia gay and feminist bookstore that is the only business in the city with the words "gay and lesbian" on its exterior sign. The attack coincided with a wave of anti-gay violence in the Philadelphia area. (Windy City Times)

Organized hate activity

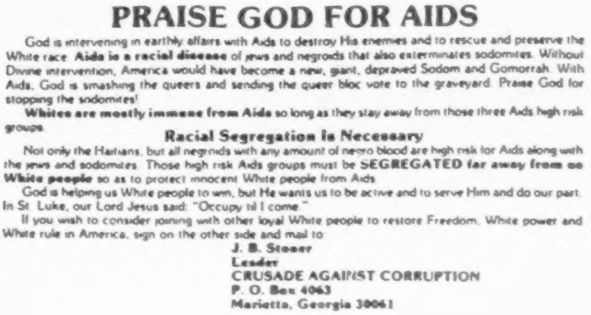
Extremist organizations—including Klan and neo-Nazi groups--have expanded their racist and anti-Semitic agendas to include harassing and terroristic acts against the lesbian and gay community. In 1986, some of these groups used high technology to promote bigotry:

o In North Little Rock, the Arkansas Liberty Net, an affiliate of the Aryan Nation, last year initiated a white supremicist computer bulletin board. With menu titles such as "Queer Watch" and "AIDS Plague" the computer bulletin board urged all callers keying into the system to "start collecting now the names and addresses of queers in their local area for entry into this on-line data base," as well as information on "all family members and close associates" of homosexuals. The information, the message said, would be included in a "nationwide hotline" and would be "acted upon when deemed expedient." The Arkansas Liberty Net, which includes numerous messages attacking Jews, Blacks, Hispanics, communists, and immigrants, joins similar bulletin boards in Dallas, Houston, Chicago, and North Carolina. (Arkansas Gazette)

o Based in Marietta, Georgia, a group calling itself the "Crusade Against Corruption" led by white supremicist J.B. Stoner, announced the inauguration of its "nationwide, patriotic, White racist, political crusade." Crusade Against Corruption flyers describes AIDS as a "racial disease of jews and negroids that also exterminates sodomites... With Aids, God is smashing the queers and sending the queer bloc vote to the graveyard." (Hate mail received by NGLTF)

o The Chicago Liberty Net, a neo-Nazi computer bulletin board, issued numerous messages defaming gay people and persons with AIDS. The messages also blame Ann Landers, Dear Abby, "Jew Hollywood," and the media, for "bringing us below the level of Sodom and Gomorrah." (Center for Democratic Renewal)

HATE MAIL AND POSTERS FROM THE "CRUSADE AGAINST CORRUPTION" AND THE KLAN



PRAISE GOD FOR AIDS

God is intervening in earthly affairs with Aids to destroy His enemies and to rescue and preserve the White race. **Aids is a racial disease** of jews and negroids that also exterminates sodomites. Without Divine intervention, America would have become a new, giant, depraved Sodom and Gomorrah. With Aids, God is smashing the queers and sending the queer bloc vote to the graveyard. Praise God for stopping the sodomites!

Whites are mostly immune from Aids so long as they stay away from those three Aids high risk groups.

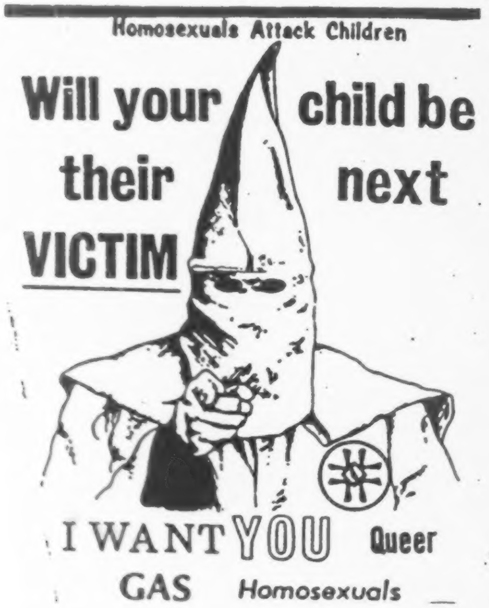
Racial Segregation Is Necessary

Not only the Haitians, but all negroids with any amount of negro blood are high risk for Aids along with the jews and sodomites. Those high risk Aids groups must be **SEGREGATED far away from us White people** so as to protect innocent White people from Aids.

God is helping us White people to win, but He wants us to be active and to serve Him and do our part. In St. Luke, our Lord Jesus said: "Occupy til I come."

If you wish to consider joining with other loyal White people to restore Freedom, White power and White rule in America, sign on the other side and mail to:

J. B. Stoner
Leader
CRUSADE AGAINST CORRUPTION
P. O. Box 4063
Marietta, Georgia 30061



Violence by family members

While it appears that most anti-gay violence is perpetrated by strangers, it also occurs among those who know each other, sometimes intimately. According to the Institute for the Protection of Lesbian and Gay Youth, a New York City-based social service agency, 40% of the violence reported by its clients is perpetrated by family members.

o When a 16 year-old youth informed his mother that he is gay, she berated him and called him a "sinner." She later assaulted him with a kitchen knife while he was sleeping, in an attempt to "cut out the evil" in him.

o In December, a Davenport, Iowa man was sentenced to 52 years in prison for killing his mother and her longtime friend. The defendant admitted killing them in order to end what he considered to be their lesbian relationship. At a court hearing he testified that he disliked lesbians "because they are strong, powerful people." (Seattle Gay News)

o Also in December, in Balsam Lake, Wisconsin, a former Chicago-area police officer received a life sentence for murdering his father and his father's male lover. The assailant shot the men at close range, apparently while they were sleeping. According to the prosecution, the slaying represented a calculated response to the victims' living situation. (Washington Blade)

Police abuse and negligence

The ordeal of victimization is even greater when the perpetrators are those responsible for protecting citizens. Historically, police departments have routinely subjected gay people to verbal and physical abuse, harassment, entrapment, extortion, and blackmail, and have ignored or mishandled anti-gay violence cases. In 1969, after countless incidents of abuse, gay people--including many drag queens--rioted against the New York City Police Department, sparking the modern gay civil rights movement. Although some police departments have taken major strides to improve relations with the gay community, complaints of police abuse persist in many areas.

o Several New York City transit police officers are accused of verbally abusing, assaulting, and unjustly arresting several lesbians in a subway in December. According to the victims, one of the transit officers said "You spic bitch, you fucking dyke--you want to be a man?" before knocking one of the women unconscious. Another of the women suffered multiple bruises, and a gash on her forehead that required stitches. Her left eye was also bloodied. Gay, feminist, Puerto Rican, and other civil rights groups have asked the Bronx District Attorney to investigate the incident, and have rallied to provide legal support for the women. (New York Native)

o In Provincetown, Massachusetts, long a vacation spot for gay and lesbian people, two gay men were assaulted by four teenage males on the street. When the police arrived at the scene, all but one of the perpetrators had fled. According to the victims, the police tried to discourage them from filing a complaint, and actually advised the perpetrator who had been caught to file counter-charges. Even though one of the victims was covered in blood, the police refused to take him to where he could get medical attention, stating that it "isn't our job." At last report, the local prosecutor's office had dropped the charges against the suspect, despite the victims' repeated pleas for action. (Report to NGLTF by victims)

o Also in Provincetown last year, eyewitnesses charged that the police used abusive language and excessive force towards gay people in a confrontation in front of a pizza parlor that is a favorite gathering place for gay tourists and residents alike. The local Human Rights Coalition also complained that the police failed to take seriously numerous reports of anti-gay harassment and violence. (Provincetown Human Rights Coalition)

o Yelling "get those fucking faggots" and AIDS-related epithets, several assailants brutally attacked two gay men in Jackson Heights, Queens. When the police arrived, an officer told the victims to hurry and "wrap up" their report because his coffee was "getting cold." Although a blow by one of the assailants shattered the facial bones of one victim, the officers refused to take him to the hospital, and only reluctantly issued misdemeanor summonses to two of the assailants who were still in the vicinity. (New York City Gay and Lesbian Anti-Violence Project)

Violence in jails and prisons

Nowhere is anti-gay prejudice more intensified--and more inescapable--than in prisons and jails. In order to maintain control, prison authorities condone and even foster hostility and violence based on race and sexual orientation. The result for many lesbian and gay inmates is unrelenting fear, isolation, humiliation, and violence.

o A gay inmate in the Idaho Correctional Institution in Boise charged that Corrections officers called him anti-gay epithets and struck him repeatedly with their nightsticks, after finding gay newspapers among his possessions. The victim reports he was knocked unconscious, and sustained compound fractures in his arms and legs, as well as serious lacerations and bruises. (Letter from victim to Philadelphia Lesbian and Gay Task Force)

o At the Louisiana State Penitentiary, a Black gay man charged that he had been called anti-gay epithets, punched, kicked, and maced by prison officials when he complained that his handcuffs were cutting off his blood circulation. Although the victim sustained cuts, bruises and back injuries, he was denied medical attention. (Gay Community News Prisoner Project)

Anti-gay defamation and "modest proposals" to deal with AIDS

Inflammatory remarks and the proposal of dangerous "solutions" to the AIDS epidemic by public figures--including leaders in religion, politics and entertainment--fanned the flames of prejudice and fear in 1986. Such statements both reflect and reinforce demeaning attitudes that lead to anti-gay harassment and violence.

o According to the Washington Post, at an August meeting with Secretary of State George Schultz, President Reagan said of the flamboyantly dressed Libyan leader Moammer Gadhafi, "Why not invite Gadhafi to San Francisco, he likes to dress up so much." Schultz added laughing, "Why don't we give him AIDS!"

o A November letter to the Bishops of the Catholic Church on the "Pastoral Care of Homosexual Persons," implied that gay people--rather than homophobic assailants--are to blame for anti-gay violence. The letter, written by prefect Cardinal Joseph Ratzinger and approved by Pope John Paul II, stated that "when civil legislation is introduced to protect behavior to which no one has any conceivable right, neither the church nor society at large should be surpised when other distorted notions and practices gain ground, and irrational and violent reactions increase." Despite an unprecedented number of reported attacks against the lesbian and gay community, the American Catholic leadership remained ominously silent on the issue.

o In March, Christian evangelist Jim Gilles preached a five-hour sermom on the University of Southern Mississippi campus, in which he endorsed the killing of homosexuals and the South African apartheid regime. (Associated Press)

o In a proposal with chilling overtones of the Nazi era, William F. Buckley, editor of the National Review, urged on the March 18 New York Times Op-Ed page that "everyone detected with AIDS should be tatooed" to stop the spread of the disease. After a storm of protest from the gay community and other groups, Buckley retracted the proposal. (Baltimore Gay Paper)

o As part of their campaign to "Spread Panic, Not AIDS," political supporters of extremist Lyndon LaRouche placed a referendum on the California ballot that could have led to forced AIDS testing of hundreds of thousands of gay people and others suspected of having AIDS, and banned those infected with the virus from working in a wide range of jobs. The referendum failed by an overwhelming margin.

o Citing a "millenia of moral teaching"--the same "moral teaching" that sanctioned slavery, anti-Semitism and sexist oppression--the Supreme Court decided 5-4 to uphold Georgia's sodomy statute and the right of government to interfere in the private lives of citizens. Following the decision, several local organizations around the country observed increased anti-gay harassment.

o In September, the Sacramento (CA) Superior Court Court upheld a lower court decision ordering Moral Majority President Jerry Falwell to pay $5,000 plus legal fees to Rev. Jerry Sloane, in connection with derogatory remarks Falwell made about the gay Metropolitan Community Church (MCC). During a July, 1984 local television talk show, Sloane charged that Falwell called MCC "brute beasts... part of a vile and satanic system [that] will one day be utterly annhilated, and there will be a celebration in heaven." Falwell denied making such a statement and promised to pay Sloane $5,000 if he could produce a tape recording of it. When Sloane presented the tape, Falwell refused to fulfill his promise, until ordered to do so by the court. (Washington Blade)

GENERAL POLICY RECOMMENDATIONS

While it is clear that anti-gay violence is widespread, it is equally clear that the official response to the problem remains woefully inadequate. In order to foster appropriate action, NGLTF calls for:

1) passage of local, state, and federal legislation prohibiting discrimination on the basis of sexual orientation so that gay and lesbian people can report crimes against them without fear of discrimination;

2) repeal of laws proscribing gay sex, which interfere with the fundamental right to privacy and which faciliate anti-gay police harassment;

3) federal, state and local funding for programs to study anti-gay violence, and to respond effectively to the problem;

4) legislation increasing penalties for anti-gay violence and other crimes motivated by bigotry;

5) more vigorous prosecution of cases involving gay and lesbian victims;

6) collection of official statistics on crimes motivated by prejudice, including anti-gay prejudice;

7) improved police/gay community relations, and establishment of law enforcement policies to address anti-gay violence;

8) improved services for lesbian and gay victims of crime and viole..

9) increased networking among organizations that combat crimes motivated by prejudice;

10) educational programs in the schools, churches and wider community to combat the prejudice that leads to anti-gay violence and other hate crimes.

The above recommendations are discussed at length in the 1986 NGLTF report, Anti-Gay Violence: Causes, Consequences, Responses. Copies of this report and other NGLTF publications are available upon request. A publication list is provided in Appendix B.

RESOURCES

Individuals and groups seeking to organize against anti-gay violence are encouraged to contact the NGLTF Anti-violence Project. NGLTF will provide information about documenting violence, assisting victims, educating the public, promoting legislation to combat hate crimes, and working with criminal justice and social service agencies. Gay and lesbian individuals and groups are encouraged to report harassment and violence to their local anti-violence project or to the National Gay/Lesbian Crisisline: 800/221-7044 (in New York State, 212/807-6016), Monday through Friday, 3-9 p.m., Eastern time. Victims can also seek help from the National Organization for Victim Assistance hotline: 202/393-6682, 7 days a week, 24 hours a day.

ACKNOWLEDGEMENTS

The National Gay and Lesbian Task Force is deeply grateful to the gay press and the gay organizations listed below for making injustice visible by providing documentation for this report.

Arizona:	Lesbian and Gay Community Switchboard of Phoenix
California:	Community United Against Violence, San Francisco
	Metropolitan Community Church, Bakersfield
	Metropolitan Community Church in the Valley, North Hollywood
	Metropolitan Community Church, Stockton
Colorado:	Gay and Lesbian Community Center of Colorado, Denver
Delaware:	Gay and Lesbian Alliance of Delaware
Dist. of Columbia:	Gay and Lesbian Activists Alliance
Florida:	Tampa Gay Hotline
Hawaii:	Both Sides Now, Kahului
	Sexual Identity Center, Honolulu
Illinois:	CTR/Metropolitan Community Church, Chicago
	Metropolitan Community Church, Good Shepherd Parish, Chicago
Indiana:	Gay and Lesbian Helpline, Fort Wayne
	Justice, Inc., Indianapolis
	Tri-State Alliance
Iowa:	Gay Coalition of Des Moines
	Gays and Lesbians of Ames, Inc.
Kentucky:	Owensboro Gay Alliance, Owensboro
Maine:	Lesbian and Gay Political Alliance
Maryland:	Greater Baltimore Business Guild
Massachusetts:	Fenway Community Health Center, Boston
Michigan:	Michigan Organization for Human Rights
Minnesota:	Community United Against Violence, Minneapolis
Missouri:	Metropolitan Community Church, Kansas City
Nebraska:	Metropolitan Community Church, Omaha
	University of Nebraska Gay and Lesbian Resource Center, Lincoln
Nevada:	Parents and Friends of Lesbians and Gays, Reno
New York:	Capitol District Lesbian and Gay Community Center, Albany
	New York City Gay and Lesbian Anti-Violence Project
North Carolina:	North Carolina Human Rights Fund/Gay Resources of Wilmington (GROW)
Ohio:	Midwest Region Discrimination Response System, Inc., Cleveland
Oregon:	Gay and Lesbian Alliance, Roseberg
	Just Out, Portland
	Metropolitan Community Church, Portland
Pennsylvania:	Individual, Pittsburgh

	Lesbian and Gay Student Alliance, Penn State University, University Park
	Philadelphia Lesbian and Gay Task Force
Tennessee:	Metropolitan Community Church, Nashville
Washington:	Mayor's Lesbian and Gay Task Force, Seattle
Wisconsin:	All Faiths Gay and Lesbian Bible Studies and Worship, Superior

NGLTF is also grateful to the Universal Fellowship of Metropolitan Community Churches and the National Gay and Lesbian Crisisline for providing documentation for this report. Finally, we wish to thank the Chicago Resource Center for its generous support of the NGLTF Anti-violence Project.

FOOTNOTES

1. Letter from Lawrence A. Bennett, Ph.D., Director, Crime Prevention and Enforcement Division, National Institute of Justice, to Kevin Berrill, NGLTF, June 3, 1986.

2. Letter from Mark Rosenberg, M.D., M.P.P., Chief, Violence Epidemiology Branch, Centers for Disease Control, to Kevin Berrill, NGLTF, January 13, 1986.

FOUR VIOLENCE STUDIES COMPARED

SAMPLE CHARACTERISTICS	PLGTF[1] STUDY	WISCONSIN[2] STUDY	MAINE[3] STUDY	NGLTF[4] STUDY
Total Sample size	167	213	323	2074
Number of females	80	75	147	654
Number of males	87	138	176	1420
Percentage female	48%	35%	46%	32%
Percentage male	52%	65%	54%	68%
VICTIMIZATION PERCENTAGES				
Verbal Abuse	80%	83%	84%	86%
Threats of Violence	31%	47%	45%	44%
Objects thrown	22%	21%	26%	27%
Chased or followed	25%	37%	38%	35%
Spit at	11%	13%	11%	14%
Punched, hit, kicked, beaten	10%	23%	16%	19%
Weapon assault	4%	10%	10%	9%
Vandalism or arson	10%	20%	20%	19%
Victimization by police	20%	24%	48%	20%
Victimization in school	33%	38%	37%	37%

[1] The Philadelphia Lesbian and Gay Task Force (1985)
[2] The Wisconsin Governor's Council on Lesbian and Gay Issues (1985)
[3] The Maine Gay and Lesbian Political Alliance and the Maine Civil Liberties
[4] The National Gay and Lesbian Task Force (1984)

OTHER SURVEYS DOCUMENTING ANTI-GAY VIOLENCE (Conducted or Released in 1985)

Richmond, Virginia, Human Relations Commission (508 Responses) Attacked or Abused — 33%	Des Moines Gay and Lesbian Democratic Club (238 responses) Verbally Abused — 67% Physically Threatened or Abused — 43%
New York State Lesbian and Gay Lobby (380 responses) Verbally Abused -- 75% Physically Attacked -- 21%	University of Massachusetts at Amherst (174 responses) Verbal Abuse, Epithets, Jokes — 87% Verbally Threatened or Harassed — 45% Physically Confronted or Assaulted — 21%

APPENDIX B

NGLTF Violence Publications:

Dealing With Violence: A Guide for Gay and Lesbian People. This booklet dicusses self defense, the aftermath of violence, getting help, dealing with law enforcement agencies, and community organizing. (1986, 30 pages, $3.50)

Anti-Gay Violence: Causes, Consequences, Responses. A comprehensive report on the causes, nature and extent of anti-gay violence. The report describes the official response to the problem and recommends ways to remedy it. (1986, 30 pages, $5)

Anti-Gay/Lesbian Victimization. An NGLTF violence survey of nearly 21,00 gay men and lesbians in eight U.S. cities. (1984, 33 pages, $5)

Anti-Gay Violence and Victimization in 1985. A report of anti-gay incidents reported to NGLTF in 1985. (1986, 12 pages, $1.50)

Copies of this report are available from NGLTF for $2.50.

STATEMENT

OF THE

NATIONAL NETWORK FOR VICTIMS OF SEXUAL ASSAULT

The National Network for Victims of Sexual Assault is comprised of state coalitions of rape crisis centers, independent centers in states without a coalition structure, some state-administered sexual assault programs, former victims of sexual assault, and others concerned with this particular crime problem. As a function of networking, NNVSA coordinates with other organizations -- primarily those concerned with crimes against women and children -- in regard to public policy matters.

The Network's interest in the FY 1988 appropriations request of the U. S. Department of Justice (DOJ) is confined to the public policy implications of this request for victims of crime. Therefore, our comments will focus primarily on those requests related to the Office of Justice Programs as that agency's activities have the most direct impact on victims of crime. However, we would like to begin our comments with a general observation about the overall DOJ FY 1988 appropriations request:

Having had the opportunity to review the DOJ proposal, we must come to the inescapable conclusion that the Administration is abandoning its previous committment to aiding states in their efforts to fight crime and assist the victims of crime. We are aware of the Administration's new view which holds that most of those efforts should be the exclusive responsibility of the states; but, we do not know what has brought about this dramatic shift in Administration interests and priorities.

According to statistics released by the Department of Justice's own National Crime Survey this past March,[1] at age twelve 83% of all American citizens can expect to be the victims of a violent crime in their remaining lifetime. Further, nearly every citizen is projected to become the victim of a personal theft at least once; while nearly one of every twelve females will be the victim of a rape or attempted rape during their lifetime. As these grim statistics make clear, crime continues to be a national problem in need of a national solution. If, as has been reported, the crime rate has stabilized over the past few years, it has stabilized at dangerously high and unacceptable levels. Yet, the Administration's earlier view that there is a need for federal leadership in fighting crime and establishing better standards for treatment of victims,[2] appears to have been abandoned.

1/ U.S. Department of Justice, Bureau of Justice Statistics reports. A National Crime Survey; released March, 1987.

2/ Legislation to Help Victims of Crime. Hearings before the Subcommittee on Criminal Justice, Committee on the Judiciary, 1984. Ser. No. 161, pp. 146-153.

Whatever the Administration's rational for abandoning state and local assistance, we submit that federal support remains needed; as does federal leadership. In still another study by DOJ,[3/] the nation's criminal justice system was revealed as being under stress. Among recommendations for relieving the stress, offered by leaders in the criminal justic field, were: increased federal funding and other federal assistance in the form of a wide range of technical assistance, training, and evaluation strategies and resources. Therefore, in the absense of any proof that federal support is no longer needed, or has proven a failure in achieving desired goals, we feel the Administration's intent to withdraw any assistance from states in this regard is premature.

In addition to our objections to appropriations requests which withdraw needed states assistance grants, we must question the priorities established by this FY 1988 appropriations request. We cannot, for example, appreciate the rationale behind the proposal to strip states and local drug enforcement efforts of federal support, while seeking an increase of over $2 million to conduct research to "control drug supply and demand" -- as if research, alone, could do those things. It seems to us that in a time of fiscal austerity, the immediate need of those on the front lines of the war against drugs should be prioritized over research.

Unfortunately, this shift in Administration priorities is also reflected in appropriations requests specific to the Office for Justice Programs (OJP). In that office, FY 1988 appropriations are sought for but two programs: the Bureau of Justice Statistics (BJS) and the National Institute of Justice (NIJ). In our opinion, the proposed increase in BJS appropriations is justified by the value of that bureau's services. However, we view the proposed increase in NIJ appropriations as but another manifestation of the Administration's intent to prioritize research over real needs.

Of the remaining OJP programs, zero (0) appropriations have been requested for the Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice Programs (OJP). And, the Department requests approval for a reduction in its obligation to spend under the Victims of Crime Act of 1984. The Administration's proposal in regard to these programs strikes at the heart of states' law enforcement and victim assistance efforts. As with the war on drugs, the Administration proposes to deprioritize assistance to those on the front lines of the war against crime, while increasing funding (or prioritizing) for research. Again, we submit that these priorities are wrong.

Perhaps nowhere is the Administration's intent to abandon its leadership role in fighting crime and aiding victims more clearly seen than in two aspects of this proposal: First, through its continuing failure to seek legislative authority for the OJP Victims of Crime Office, the Administration is abandoning the recommendation of the President's very own Task Force on Victims of Crime. That

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[3/] "Assessing Criminal Justice Needs", National Institute of Justice Research In Brief reports, June 1985.

task force felt this Office should serve as the focal point of all federal activity on victims of crime.[4/] While the Victims' Office has been established in the DOJ organizational structure, without adequate authority and funding, it's full potential remains unrealized. The message to those of us who have long sought federal interest and support is quite clear: victims of crime are not a priority. If they were, the Victims' Office would have some say in Administration policy and decision-making.

Secondly, by attempting to effectively "gut" the federal Victims of Crime Fund, the Administration is both reneging on earlier commitments and ignoring Congressional directives. As you know, the Fund is intended to assist states in broadening efforts to compensate and otherwise assist victims of crime in both federal and states' jurisdictions. The Fund's principle source of revenues are monies collected from federal criminal fines and forfeitures. Revenues do not come from the general treasury. It should not, therefore, be necessary for Congress to act on Administration requests regarding this Fund. It is our understanding that once authorized, the spending levels established by the authorizing committees are to remain in effect until expiration of the Act in 1988. Further, under the terms of the authorizing legislation, unspent monies would remain in the Fund; they would not be returned to the general treasury. Therefore, we cannot see any real savings to the taxpayer from a reduction in the Department's obligation to spend.

We are , in fact, puzzled by the Administration's pursuit of this goal. The Fund was not forced on an unwilling Administration by Congress in 1984. To the contrary, the Administration supported legislation to create this Fund. The programs it supports cannot be said to benefit only victims of crime in states' jurisdictions as many victim assistance programs, such as rape crisis centers, provide free services to victims of crime committed in federal jurisdiction. And, in view of the fact that taxpayers do not contribute to the Fund, nor will the general treasury benefit from withheld spending, we can see no contribution to deficit-solving which would accrue from approval of this Administration request. Yet the Administration has pursued this objective from the very first year after enactment of the Victims of Crime Act; and, pursued it in a manner which seems to us to undermine the authority of the Congressional Judiciary Committees.

We believe that Congressional approval of these various proposals will cause harm to the advances that have been made over the past three years. Only five short years ago, President Reagan signed Executive Order 12360 establishing the President's Task Force on Victims of Crime. This action recognized the pivotal role of victims and witnesses in the criminal justice system; and, the need for better standards of treatment of crime victims. Later, and with generally unanimous Congressional approval, many of the Task Force's legislative proposals were adopted. Among the most significant were the Federal Victim and Witness Protection Act of 1982, the Justice Assistance Act of 1984, and the Victims of Crime Act of 1984. At the state and local levels, as well as the federal level,

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4/Final Report of the President's Task Force on Victims of Crime, December 1982, p. 49.

these actions have provided for assistance to crime prevention efforts; training for law enforcement personnel, prosecutors, judges, and victim advocates; as well as an expansion in the availability of crime victim compensation and assistance. Under the able leadership of former Assistant Attorney General Lois Haight Herrington, the Office for Victims of Crime has successfully increased public awareness about the tragedy of crime victims and promoted growth in citizen participation in crime prevention. However, many initiatives have had but three years to accomplish what are clearly long-term goals; particularly those initiatives approved by Congress. Therefore, we must urge the Committee to disapprove the requests abolishing OJP programs and withholding grants to states on the following grounds:

1) Through its proposal to abolish the Bureau of Justice Assistance and reduce spending from the Victims' Fund, the Administration is abandoning those programs with the greatest potential for real impact on victims of crime;
2) by requesting $3,792,000 in administrative/management funds for abolished (if Congress approves) programs, the Administration proposes a highly questionable use of taxpayer money; and
3) by seeking to reduce the grant support now given states from the Victims of Crime Fund, the Administration is seeking a symbolic, rather than real, saving to the federal treasury and tying up monies desperately needed in the victim asssistance field.

In addition to re-thinking its priorities, we strongly recommend that the Administration take the following actions:

1) Because of the pivotal role played by the OJP Office for Victims of Crime in ensuring continued federal leadership on the victims of crime issue, we recommend that that office be formally authorized at a FY 1988 appropriations level of $10 million. This action would reconfirm the government's commitment to solving a national problem in need of national solutions.
2) This $10 million can be obtained by reducing the $22,094,000 appropriations request for NIJ to $12,094,000. In this way, federal funding for training, technical assistance, demonstration models, and other needed material resources to aid the crime victim assistance field could be achieved. And, more appropriate priorities would be established.

In lieu of Administration action in this regard, we would urge any members of this Committee who understand the need for a firmer federal commitment to victims of crime, to initiate the necessary legislation.

In closing, we reiterate our opposition to many of the Administration's proposals; most especially to reduction of DOJ's obligations under the Victims of Crime Act. Because of low revenues collected in FY 1987, states did not receive the maximum amount of grant money permitted under the VOCA cap. This year, however, revenues are expected to reach $80 million -- still less than the cap, but more than last year. Therefore, we urge this Committee to let the VOCA $110 million cap stand unaltered.

STATEMENT OF

THE ANTARCTICA PROJECT
AND
GREENPEACE

on the

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BUDGET FOR FISCAL YEAR 1988

Paul Bogart
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James N. Barnes
The Antarctica Project
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INTRODUCTION

This statement is submitted on behalf of the Antarctica Project and Greenpeace. The Antarctica Project is a non-profit organization dedicated to the protection of Antarctica and its wildlife through public education and scientific and policy research. Greenpeace is an international environmental organization with over 700,000 supporters in the United States, and is conducting a major international campaign to save Antarctica. We believe conservation and protection of Antarctic wildlife and ecosystems should be an important priority of the U.S.

To regulate harvesting of marine living resources in the Southern Ocean, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) was negotiated, beginning in 1978. The Convention was signed in 1980, and came into force in 1982. As part of the U.S. plan to implement CCAMLR, Congress directed NOAA and NMFS to "design and conduct a program of directed research" in the Southern Ocean. Last year the Congress provided funding despite the fact that the Department of Commerce declined to request it, ignoring broad support for the program. Commerce has again this year failed to request funding, jeopardizing planning for the crucial second phase of this research. In our view, the failure to ask for adequate funding is a violation of the Secretary's legal obligations.

THE NEED

CCAMLR is a unique conservation convention that takes a "whole ecosystem" approach to fisheries management. Under this scheme, any activity's influence throughout the entire ecosystem is to be considered before a decision is taken on any individual marine resource. Five years after coming into force, however, the Convention has failed to take the necessary measures to carry out its mandate. The fishing states, in particular the Soviet Union, continue to defy attempts to monitor and regulate the fisheries of the Southern Ocean. By abusing the Convention's consensus decision-making process, the fishing nations have consistently blocked all attempts to regulate the fisheries.

Since 1969, three of the four most important commercial finfish species (Marbled notothenia, Scaled notothenia and Patagonian toothfish) in the area have been heavily overfished. As for the fourth species, Antarctic icefish, there is grave fear for the future of the stock due to a massive catch in 1982-83 and continued heavy fishing. Preliminary results of the first phase of the research program indicate fish stocks of all four species are "at levels far below the capacity for rapid recovery."

The fishing nations have now turned their attention to krill, the small crustacean which forms the basis of the Antarctic ecosystem. Available information on the biology and ecology of krill is insufficient to predict quantities that could be harvested without depleting the target species or altering the numerical or functional relationships between target, dependent and associated species. Despite this lack of information, the harvest of krill has begun without any regulation. Environmental organizations fear that without the necessary controls, krill and the animals which depend on it (including whales, seals, penguins and other seabirds), may go the way of the finfish.

The Soviet rationale for blocking regulatory measures is that there is simply not enough scientific justification for the setting of quotas. Ironically, the fishing states, which have important data resulting from fishing activities, have been unwilling to release it to the international community. In addition, information about important ecological processes, especially the role of various species in the Southern Ocean ecosystem, is scarce and desperately needed. It is hoped that once the ecosystem is better understood, the fishing nations will find it much harder to veto conservation provisions.

THE U.S. RESEARCH PLAN

The Program Development Plan or PDP, has been carefully reviewed and endorsed by all agencies represented in the Antarctic Policy Group (including the Departments of State, Defense, Energy, Interior, Transportation and Treasury, as well as NOAA, EPA, the Marine Mammal Commission and others). According to the Policy Group, the plan

> "would make a significant contribution to the overall understanding of the structure and function of the Antarctic marine ecosystem and could provide information essential to effective U.S. participation, within CCAMLR, in the conservation and management of the marine living resources in ocean areas surrounding Antarctica. As such, it would contribute significantly to U.S. Antarctic policy objectives, which include maintenance of a lead role in the operation of CCAMLR."

The program was designed to carry out essential stock assessments of the major components of the ecosystem: fish, krill, whales, seals and birds. In addition, complex oceanographic data is being obtained in order to determine how various factors affect the abundance and survival of krill, and ultimately, its predators and prey. Indeed, findings from the first years research show that : depletion of fish stocks is more serious than previously thought with one species at only one tenth of its size in 1984-85. Additionally, krill were only one third as abundant in the area studied by NOAA.

Experiments were also conducted tq simulate the effect of a reduced ozone layer on Antarctic phytoplankton growth with preliminary results indicating a significantly greater growth rate in samples which recieved reduced ultraviolet radiation. Approximately 4 million dollars is needed for FY 88 to continue this vital research. Half of those funds will be used for vessel charter and operation.

BENEFITS OF THE PROGRAM

1. The information gleaned from the research will enable the wise management of the resources of the Southern Ocean. All too often, the gathering of baseline data is not attempted until after exploitation has caused noticeable impact. We now have the rare opportunity to study the role of krill in the ecosystem prior to long-term, intensive exploitation.

2. The results of the research will be useful for managing fisheries in the U.S. 200 mile zone, particularly in complex ecosystems such as the Bering Sea.

3. The U.S. will maintain its leadership role in Antarctic conservation. In promoting the "whole ecosystem" management approach, the U.S. led the effort to acheive strong protection for the Southern Ocean ecosystem. If the U.S. fails to follow through with this commitment, the fishing nations will assume the lead with potentially dire consequences for whales, seals, birds and other marine life.

INTERNATIONAL EFFORTS

U.S. research in the Southern Ocean is one component of a broader effort by the Consultative parties to monitor the Southern Ocean ecosystem. At the fourth meeting of CCAMLR's Scientific Committee, member nations outlined their expected activities in this regard. For 1987, expenditures on monitoring activities were estimated as follows:

The Soviet Union	6,100,000
Japan	5,000,000
Federal Republic of Germany	4,400,000
United States	3,975,000
Argentina	2,400,000
Australia	2,000,000
United Kingdom	2,000,000
France	1,400,000
South Africa	700,000
Norway	400,000

The U.S. share of this research amounts to approximately 14% of the total. This is a modest sum considering the CCAMLR management model was conceived of and negotiated under the leadership of the United States. Perhaps more importantly, without U.S. participation in this program, approximately 65% of the Southern Ocean research will be undertaken by the fishing nations. It is arguable that a fundamental conflict of interest will exist if the fishing nations conduct the lions share of the research necessary to bring their activities under control.

NDPC
National
Democratic
Policy
Committee

Ronald S. Kokinda

Thank you Mr. Chairman for the opportunity to testify before you today.

I want to focus heavily on a small budget item under your jurisdiction, but which has had a large effect detrimental to our vital national interests. The NDPC urges you to correct this problem by defunding the National Endowment for Democracy (NED) and launching a thorough investigation into this private, extra constitutional, foreign policy making body.

The Executive Intelligence Review journal is publishing a special report on Project Democracy covering what the Tower Commission left out: that NED is part of the secret government of Oliver North's Project Democracy. The NDPC will make this report available to the committee upon publication, and we offer the committee access to our investigative files.

I would like to lead into a fuller discussion of the NED by discussing the NDPC call for an effective War on Drugs.

The NDPC has urged that a War on Drugs be declared. It is the right war at the right time. A declaration of war must include a commitment to mobilize resources, and to selectively bring military assistance to bear. Such a war is necessary to begin to restore trust and cooperation with our neighbors in this hemisphere.

The War On Drugs

Two events during 1986, the national security decision directive on Narcoterrorism and the President's early Autumn emphasis that a war on drugs was a top priority, were encouraging signs that the Reagan administration was prepared to take measures against what is possibly the second highest national security threat to the nation, drugs and terrorism. But since the elections there has been a wall of silence.

There are two dimensions to the problem. One is the budget and funding for the WOD. The NDPC urges the Congress to ensure that we spend everything necessary for an effective war. But while important, this is a secondary question. Funding could be significantly met with an aggressive program of seizures.

The more fundamental point is that a declaration of war, mobilizing personnel and resources, and running a war according to the rules and conduct of war, requires political will, commitment and leadership. But there is an extraordinary gap between the stated commitments of last year and the necessary active anti drug role of the nation during the next two years, and what is actually taking place.

Our investigation into Project Democracy and the NED shows that through the Chamber of Commerce's CIPE and the AFL-CIO's AIFLD, they are lending support and encouragement to the drug lords of Central and South America. Ending our reliance upon these organizations and networks is a necessary corrective dimension to launching a War on Drugs in ernest.

I have included excerpts from an introduction by Mr. Lyndon LaRouche to the EIR special report, to properly situate what the Project Democracy-NED networks represent.

I have also included a second statement by Mr. LaRouche on the War on Drugs and ending funding for the prosecution of defense procurement fraud. The NDPC urges the committee to cut out funding for this Justice Department function.

Introduction: The key to 'Irangate'

by

Lyndon H. LaRouche, Jr.

"...At the center of the complex associated with Project Democracy, is an aging spider, Jay Lovestone. The Lovestone case is key to making sense of the Irangate scandal as a whole. This introduction is devoted to identifying the significance of that Lovestone connection.

"Jay Lovestone's background in professional intelligence work began as a Soviet agent in the Communist Party U.S.A. back during the 1920s. As a result of these direct connections to Moscow, Lovestone was handpicked by the government of N. Bukharin to head the CPUSA at the end of the 1920s, over the popular William Z. Foster. Lovestone was ousted from that post shortly after Stalin's coup, overthrowing Bukharin. Lovestone became then one of a handful of top leaders of what was known then as the Communist International's Right Opposition, together with Bukharin and Rykov in Russia, Brandler, and Thalheimer from Germany, and so on. This International Right Opposition maintained a major intelligence apparatus into 1938, working both with Stalin's intelligence services and also with certain Western intelligence services, including the U.S. State Department. About 1938, Lovestone made a religious conversion to an overtly anti-Soviet form of anti-Stalinism, and was soon established as a "State Department socialist." During the 1930s, the Bukharinites set up a U.S.-based organization, called the International Rescue Committee, which concentrated initially on bringing Brandlerites out of Hitler's Germany. Lovestone's base for this operation was the New York offices of the International Ladies Garment Workers Union (ILGWU), and that union's industrial engineering department was one of the key operating bases for Lovestone's intelligence apparatus.

"Early during the postwar period, the Lovestone apparatus moved into the vacuum left by the dissolution of the Office of Strategic Services (OSS). Their Chekist training enabled them to outmatch most competing professionals in the postwar U.S. intelligence services. They established an entrenched position of power, based chiefly on the AIFLD-centered intersection between the U.S. intelligence services and what became the AFL-CIO's international department of today. Their specialty became the nastier aspects of covert operations, including the rough stuff.

"Imagine that such a powerful network within our labor and intelligence organizations had never really broken with Moscow, or that it had resumed collaboration with Moscow sometime after

Stalin's death. Those questions were forced into our thoughts by some strange things about 1980s operations of AIFLD in Central and South America. AIFLD, usually referred to in those nations as "The Institute," was helping Moscow's interests with a curious consistency. Today, some of the putative "stalwart anti-communists" of Lovestone's apparatus, are prepared to make more open support for Moscow if, as they hope, Secretary Gorbachov will show he is a true admirer of Bukharin's memory. The pattern of evidence indicates that they were never anti-communists, have never ceased being Bukharinite communists.

"Our friends in Central and South America have been engaged in a head-on fight with the Soviet Latin American intelligence organization of the late Anastas Mikoyan and Evgenii Primakov. The Soviet official line for anti-U.S. operations in that region is broadcast to the faithful followers through a Soviet Spanish-language publication, America Latina. The most important Soviet operations in the region are centered around terrorist gangs tied closely to the narcotics traffic. AIFLD, curiously enough, frequently backs the legal political organizations associated with these narco-terrorist forces. Despite our repeatedly informing the relevant U.S. agencies of this scandalous behavior, the United States continues to back AIFLD in running these political operations.

"This is the case in Mexico, Panama, Colombia, and Peru, among other nations of the region. The case of Project Democracy's connections to the Contras is no exception to the pattern.

"Put it this way. Imagine that you give political support to our government's backing of the Contras. You are probably an anti-communist, who views the Contras as part of an effort to stop Moscow's penetration of the Americas. Right? Then, why has Moscow been shipping arms to the Contras? First, we noticed the case of the ship Pia Vesta, delivering weapons from East Germany. Recent leaks published by liberal news media have identified other cases. Also, the Contras have been caught in the drug traffic. The drug traffic in the region is controlled by a syndicate operating in cooperation with Bulgaria and Cuba. Does that sound like an anti-communist operation to you?

"Look at the Contra operation again. The Contras' capabilities and actions make the 1961 Bay of Pigs fiasco seem like a Douglas MacArthur victory by comparison. It is a disgusting, futile, unserious operation whose main effect on Nicaragua has been to strengthen the position of the present government of Nicaragua.

"An effective operation in the region would be working closely with the Contadora Group in building up the economic and military strength of the nations around Nicaragua. Nothing would do more to encouarge a serious political opposition inside Nicaragua than economic success and national security among the neighboring states. The State Department official most prominently involved in the Contra operation, Elliott Abrams, has fought against any such strengthening of Nicaragua's neighbors.

"Let us assume that Oliver North, Elliott Abrams, and so forth, were either blindly carrying out orders, or just being dumb. Are the Lovestoneites in the amateur smart-aleck bureaucrats' league of an Ollie North, an Elliott Abrams, or a Jack Singlaub? If we correlate the Lovestoneites' conscious support of Soviet subversion interests in the region with the cruel facts about the quality and effect of the Contra policy, we must return to the question: "Did the hard-core

Lovestoneites make a permanent conversion to anti-Soviet attitudes?

"Take the related case of the Alexander Haig-linked Michael Ledeen. As Ledeen wrote in his book, Universal Fascism, he is a professed fascist. "Universal fascism" is the professedly neo-Nazi doctrine of a former Swiss volunteer in Hitler's SS, Dr. Armin Mohler. This is the doctrine Ledeen studied and adopted in Europe. Ledeen's ideal is the pre-1935 period of Mussolini's fascism. He has dedicated efforts to bringing about such a revival of fascism, both in Italy and in Israel. Perhaps more important than Ledeen himself, is his wife, Barbara. The pair are near the center of the influence of Israel's weapon-traffickers on the U.S. intelligence establishment, and close to the circuit of Jonathan Pollard, as well as Shoshona Bryen. Ledeen is also linked intimately with the Project Democracy apparatus. In practice, Ledeen's fascist ideals and the Lovestoneites' ideas about democracy are quite compatible philosophies.

"We know this crew very well. Wherever we and our friends are battling against Soviet influence and operations, the Lovestoneites and their dupes often place themselves on the Soviet side of the barricades. Otherwise, the complex of forces allied with the Lovestoneites have generated about 90% of all the attacks on us and our friends, through agencies of government, the liberal news media, and so forth. Take the case of Dennis King, for example. King has been the chief resource used against us by an ADL linked to Cuba's Robert Vesco, by Lane Kirkland's AFL-CIO, by LID, and by most of the liberal news media. The Heritage Foundation's libels are drawn chiefly from the same source, as was the New Republic's. Eliminate the legal and news media attacks created by these forces, and more than 95% of the attacks on us would never have existed.

"A significant part of the reason for such attacks upon us, has been that we have opposed them in what they are justly accused of doing in matters of the Irangate scandal. Otherwise we represent in their opinion, a political and moral philosophy which compels us to oppose such corruption of our government.

"On which side do you stand? Theirs or ours? The following pages should help you to make an informed choice."

(30)

CUT THE ALLOTMENT FOR 'DEFENSE PROCUREMENT FRAUD'

by

Lyndon H. LaRouche

As a rule of thumb tactic, the Congress should not only maintain the previously budgeted level of allotment to the War against Drugs, but should transfer the sum requested for Justice Department investigation of "Defense Procurement Fraud," as an added allotment to the War on Drugs.

I had the privilege of assisting a task-force which conducted a very successful demonstration of the possibilities for cutting much of the drug-trafficking into the United States at the source. This task-force was created by the government of Guatemala. The operation was assigned to the military forces of Guatemala, and included assistance from U.S. nationals acting as advisers in preparing the action, and in assessing the effects of the sudden, swift, and very efficient military action conducted.

I have had the opportunity to discuss the desire for, and feasibility of similar actions with representatives of several governments of nations below our Rio Grande border, and to review the matter with relevant U.S. professionals. Some of those governments are continuing to take such measures, with some notable success. They would be much more successful with increased technical assistance from the United States. If we are wise, we know that we can not afford not to provide them such increased assistance; the drug plague is costing our nation hundreds of billions of dollars.

I have accumulated approximately eight years of experience, in collaboration with professionals and others, here and abroad, in the matter of combatting the international drug-traffic and its narco-terrorist adjunct. Combatting drug-addiction and combatting the drug-trafficking itself, are two distinct aspects of the total array of measures needed. Programs of education and assistance to victims of drug-usage, are necessary, but become futile unless drastic military and law-enforcement measures are also taken, attacking the production and movement of such substances at each stage from the point of origin to the street-level user inside our nation. I now summarize what experience shows to be the only effective battle-plan against the international drug-trafficking.

There are six points, at each and all of which the international drug traffic must be crushed, if we are to be effective. 1) In the nation in which the substances are originally produced. 2) In movements of substances across national borders. 3) Through intensive inspection of all vessels and aircraft entering the United States. 4) Through tracing the flow of revenues from the drug-traffic through financial institutions, and through administering crushing penalties to institutions whose negligence fosters the existence of channels of laundering of drug-revenues. 5) Through sweeping the drug-pushers from the streets. 6) Through strict and vigorous law-enforcement action, with severe penalties, against the users who represent the market on which the existence of the drug-traffickers depends.

Although appropriate types of military aircraft, helicopters, and electronic equipment, are indispensable for dealing with the production and bulk transport of such substances, no amount of equipment would produce success without improvement in the system of human intelligence affecting all six layers of interdiction.

Friendly nations are crippled by lack of proper radar, and shortages of aerial flotillas which combine gunship planes and helicopters. With adequate equipment military arms of nations below our Rio Grande border can be very effective in doing their part. We must be more consistent in aiding these governments with access to current satellite and AWACS-type information, to assist in selecting and planning military and similar operations. We do not need to send in U.S. Green Berets, except as civilians assigned to liaison with relevant agencies of those governments.

Apart from this modest amount of assistance to cooperating foreign governments, the most massive problem today, is a shortage of qualified anti-drug intelligence personnel in federal, state, and local U.S. agencies. Although law-enforcement is an integral part of this, effective law-enforcement by itself is not the answer. The key is the use of high-quality methods of intelligence detection, tracking, and operations, in pinpointing targets for appropriately military or law-enforcement action. We require law-enforcement professionals who have shown an instinct for intelligence-work, but we also need a substantial increase in the numbers of anti-drug intelligence officers as such.

We must increase the allotments for the War on Drugs in two categories. 1) We must increase allotments of materiel required as assistance to cooperating governments. 2) We must increase substantially the number of anti-drug intelligence officers in every responsible agency. If we do not find the will to do these two things, we can not be said to be serious about fighting a War on Drugs to win.

The proposal to build up a larger capability within the Department of Justice for seeking out irregularities in defense procurement, must be rejected as a dangerous sort of bureaucratic boondoggle, at a time when we can ill afford to waste federal monies on enterprises which are either marginal or useless. Under Secretary Caspar Weinberger, who has a long record of accomplishments in such matters of financial administration, the Department of Defense has made substantial improvements in the vigor and precision of its auditing practices. Given the savage constriction of funds available to meet the most urgent needs, we may be certain that that Department and its senior military professionals are most zealous to avoid overpayments for any items.

As many senior members of the Congress familiar with the problems of defense procurement know, the existing rules, methods and procedures are designed in such a way as to produce strange results, through no fault of Department personnel or the defense contractors. I have had occasion recently, to contrast our methods and procedures of awarding and administering contracts with practices in Western Europe. I wish to offer a proposal which I think is a sound alternative to the budgetary program presented by some elements within the Justice Department, a proposal which some senior members of Congress will recognize as a cogent one.

The Congress should review the existing and optional alternative rules, methods, and procedures of defense procurement, with a view to legislative action which will eliminate some of the costly absurdities in present standards and make the system simpler and more rational.

To illustrate the point: It would be sensible to treat the matters of design, production, maintenance, and replacement parts of a type of purchased unit, as a single item, in approving designs and in awarding of contracts. It is silly to throw away the tools needed for maintenance later, when a contract to deliver aircraft has been completed. It is ludicrous, and ultimately greatly increases costs of military systems, to prohibit defense contractors from doing relevant research in areas closely related to the types of products they are currently producing.

It would be a dangerous and costly game of roulette with our national security interests, to encourage ambitious legal gun-slingers from the Justice Department, to seek out ways of prosecuting defense contractors, by resort to curious reinterpretations of statutes and procedures, reinterpretations which are vastly more absurd and costly in the consequences than the already-existing anomalies in the rules.

This is a season for government to admit its past mistakes, in foreign policy, and many other areas. Our defense industry is already an endangered species, partly because of anomalies in extant rules, methods and procedures of procurement. Let us correct bad policies, rather than carrying bad policies to the limits of forensic lunacy.

American Association of Nurserymen

The American Association of Nurserymen (AAN) is the national trade association of the nursery, landscape and garden center industry. We represent more than 3,500 firms across the country engaged in all aspects of the green plant industry -- its grower, landscape and retail segments. By almost any standard, our members are primarily small family-owned farms and businesses. It is estimated that the retail value of nursery crops sold in the United States in 1985 was $5.4 billion.

Our members strongly support efforts to cut the federal deficit. We have long been vocal and persistent advocates of a control on federal spending. In this current round, we are once again prepared to step to the front and take our fair share. Traditionally, the nursery industry has never looked to the government for handouts -- and today is no exception.

However, we also recognize that our federal government is an amalgamation of many small but vital programs, filling needs which cannot be met by the private sector. The Horticultural Specialties Census (HSC) is one such program. In FY88, HSC will cost only approximately $300,000, which in the current budget discussion is the type of line-item which is often lost in just rounding off budget estimates. Dollar for dollar, we believe our economy and nation receives a lot for this modest investment. AAN has examined closely all programs affecting the nursery industry, and it is only after considerable thought that we have selected those programs which simply cannot be lost in the budgetary shuffle. This is one such vital program. AAN wishes to thank this Committee for reinstating last year the necessary HSC funds and we respectfully request that funds be appropriated once again.

The nursery industry is proud of our contribution to the environmental well-being of our nation. Purification of the air; stabilization of the soil; clarification of the waters; abatement of noise; conservation of energy resources; and vital contributions to mental and emotional well-being are just a few of the "fruits" of our efforts.

At the same time, the nursery industry also makes a substantial contribution to the national economy. HSC collects data on the "grower" portion of the industry. We estimate that in 1985 approximately 5,350 commercial growers, with $10,000 or more in sales, produced crops with a wholesale value of $1.8 billion. More importantly, nurserymen make two other important contributions to the overall overall national economy. First, we are a labor intensive industry providing many new jobs each year. Second, we are an "access" industry. In comparison to many other industries, it is easy for an individual with the entrepreneurial urge to start a nursery. It is quite another thing to make a sustained "go" of it, but the opportunity certainly exists. As a result, the nursery industry has a fluid fluid economic profile, characterized by growth. AAN was founded back in 1875 and new entries into the industry have been on a steady uphill curve ever since.

This is where the HSC comes into play. HSC is a measure of commercial activity. By comparison, the General Agriculture Census collects data on "any place from which $1,000 or more of agricultural products were sold or normally would have been sold during the year". As a result, the general census picks up many farms which are not commercial nursery growers and conduct such activities incidental to their "regular" agricultural production. HSC defines a horticultural establishment as an operation growing and selling at least $2,000 of horticultural products in a year. The difference is significant in understanding the growth of the industry, and more importantly, the needs of its firms. Horticulture, especially nursery production, is generating new businesses, new jobs, increased use of products and overall very positive economic activity. The opportunities for continued growth of family-owned and operated horticultural farms are increasing. Reliable benchmark data is desirable to understand what is occurring and what is likely to occur within the industry. HSC has consistently gathered the very best data on commercial nursery production.

HSC also produces statistical data on a variety of special crops and more detailed production information than found in the General Agricultural Census. The changes in crop production (e.g. woody nursery crops, foliage plants, floral crops, bedding plants, greenhouse vegetable crops, mushrooms, bulbs, turf, etc.) provide invaluable information for understanding the nature and extent of production expenses, channels of distribution, consumer demand and employment needs for making planning decisions based on such trends.

The nursery industry relies heavily upon this data in order to project educational and management needs. AAN uses the HSC as a benchmark or base for our "Scope of the Nursery Industry" published every five years. The HSC data is not available elsewhere and, frankly, we believe it would be impossible for these specialized horticultural industries to collect this data on a uniform basis. Our suppliers of products and services, as well as banking institutions, need the specialized HSC data in order to make their decisions on serving the industry.

The nursery industry further relies upon HSC data to demonstrate the need for development of products such as pesticides and equipment. Since registration for nursery uses is often secondary, the nursery industry currently does not have sufficient new pesticides to meet its needs. However, chemical manufacturers have indicated they would be more willing to register new compounds if they know the market. HSC plays a necessary role in ensuring availability to chemical manufacturers of the nursery industry's size and market potential.

HSC also provides equipment manufacturers with market information which is then used in the development of new machinery for the nursery industry. Historically, our industry has been more labor intensive than it otherwise might be, but using the available HSC market information, equipment has been modified for nursery use.

AAN believes that the HSC participant response rate is striking evidence of the industry's assessment of the need for this program. The response rate is nearly 90%, and we are told this is among the highest rates for any part of the Census. The nursery industry does not consider HSC to be a burden, rather we consider it to be an unusually valuable economic planning tool.

In summary, HSC is not a collection of numbers which sits on the shelf collecting dust. HSC makes a valuable contribution to an industry which is a dynamic and vital segment of our national economy. The nursery industry has done all it can over the years to cooperate in this endeavor, and we will increase our efforts. As noted at the outset, nurserymen are concerned about the federal deficit. We ask Congress to hold the line on expenses, but not to eliminate a program which serves such an essential purpose in such a cost-efficient and effective manner.

Mr. Chairman, as in years past, the American Association of Nurserymen truly appreciates the opportunity to present the views of the nursery industry to you and your Committee with respect to the Horticultural Specialties Census. Once again, we wish to thank you very much.

STATEMENT OF THE CALIFORNIA RAISIN ADVISORY BOARD

The California Raisin Advisory Board urges the Committee to continue funding in Fiscal Year 1988 for the Fruit Frost-Agricultural Weather Forecast and Advisory Service.

The California Raisin Advisory Board ("The Board"), under the auspices of the California Department of Food and Agriculture, oversees the state marketing order for raisins. The Board represents over 4,500 producers and processors of raisins, who account for 100% of the U.S. and 30% of the world production.

The Board takes an active interest in matters of vital concern to the raisin industry, including generic advertising, promotion and funding for research, and producer information programs. We appreciate this opportunity to once again present a statement for the record strongly supporting the continuation of the Fruit Frost-Agricultural Weather Forecast and Advisory Service.

The Board is well aware of the difficult budget times and the need to reduce the Federal deficit. Many raisin growers have gone bankrupt over the past few years. Even with our tight budget we have seen fit to help improve weather forecasts for the raisin industry by helping purchase up-to-date equipment for the National Weather Service. We have done this with the conviction that when the facts are known Congress will have the wisdom of continuing this very valuable program.

For over 60 years, the Fruit Frost-Agricultural Weather Forecast and Advisory Service Program has provided the multi-billion dollar fruit and vegetable industry in

California, Arizona, Texas and Florida with accurate, site-specific minimum temperature forecasts and other advisory services. Armed with these detailed forecasts in advance of a potential weather problem, growers are better able to take steps necessary to reduce or avoid weather damage to crops. The "zone weather forecasts", provided by the National Weather Service cannot take the place of the Fruit Frost-Agricultural Weather Forecast and Advisory Service as these zone forecasts are not site-specific, and thus are of minimal use to growers.

The Fruit Frost-Agricultural Weather Forecast and Advisory Service employs highly trained agricultural meteorologists, who closely monitor weather patterns which could be potentially devastating to sensitive crops. Information is gathered on a daily basis from numerous sites and carefully analyzed by meteorologists, who then make site-specific forecasts for the various locations within their region. These forecasts are made available to the public through television, radio, and telephone recordings.

The Fruit Frost-Agricultural Weather Forecast and Advisory Service is extremely important to the California raisin industry as more than 80% of the U.S. production is in a 500 square mile area in Fresno County, with the remaining 20% scattered throughout adjacent counties in the central San Joaquin Valley. With such a large percentage of the national crop concentrated within a small region subject to particular weather changes, the California raisin industry depends heavily upon the Fruit Frost-Agricultural Weather Forecast and Advisory Service for accurate and timely site-specific forecasts. It is estimated that in the San Joaquin Valley alone, the Fruit Frost-Agricultural Weather Forecast and Advisory Service saves the industry roughly 10% of the crop value through more efficient use of irrigation, reduced and better applications of pesticide sprays and nutrients, and accurate forecasts provided during the harvesting and drying period.

The California Fruit Frost-Agricultural Weather Forecast and Advisory Service covers areas where frost sensitive crops are grown, from the northern Sacramento Valley to the Mexican border. It is estimated that over $1 billion of the $15 billion California agricultural output is frost sensitive. Further, the estimated annual crop-loss savings in California alone approaches $70 million.

In addition to the fruit frost forecasts, the National Weather Service agricultural meteorologists provided detailed, site-specific forecasts to growers in an effort to reduce the amount of pesticides applied. A tremendous emphasis has been placed upon Integrated Pest Management ("IPM") by the U.S. Department of Agriculture/Agriculture Research Service, experiment stations and the various agricultural and related industries. Everyone associated with this research feels that the IPM approach to a more judicious use of pesticides will benefit agriculture and the end user of agriculture products. It should be noted that many of the IPM decisions are weather driven. That is, accurate weather data is vital for the efficient use of any of the IPM programs.

A report by the California Agriculture Weather Task Force states that uses of agricultural weather information include chemical applications, harvest timing, irrigation timing, pest management, frost protection, planting, burning, labor scheduling and etc. Uses by an individual can vary depending upon commodities and conditions but it is evident that agriculture is constantly dependent upon agricultural weather information to make management decisions.

The California Agriculture Weather Task Force in its recommendations states that National Weather Service is and should remain the base for agricultural weather programs in California. To interrupt this valuable service would produce disastrous results; to eliminate this service would cause repurcussions from which we could not recover, including the strong possibility of higher prices for the crops involved.

The Agricultural Weather Committee under the auspices of the California Department of Food and Agriculture (CDFA) is currently working closely with the National Oceanic and Atmospheric Administration (NOAA) to improve coordination. It is hoped that this coordination would result in improvements in the existing program such as better identification of the needs of both forecasters and users and how to better meet those needs.

The California Raisin Advisory Board is deeply concerned with the decision as reflected in the proposed budget to again eliminate the Fruit Frost Forecast and other agriculture weather services. These programs return millions of dollars in lost crop savings to the producer and consumer each year. In fact, program audits indicate the Fruit Frost Service has the highest cost-benefit ratio of any division within the National Weather Service. Further, it would be extremely difficult, if not impossible for the private sector to take over all facets of these programs. The recognized expertise and high quality of professionalism within the National Weather Service could not be matched at any cost through contracting with private entrepreneurial services. There is no doubt that private sector costs would be many times more costly than current service, and it is highly probable that the quality of service would be less and might be unusable.

The California Raisin Advisory Board strongly urges this Committee to once again reject the Administration's decision to end these valuable agricultural weather programs.

We are aware of the conference agreement in fiscal year 1986 which not only restored the funds for this program but which also admonished the Administration for continuing to propose the elimination of the program. We feel such strong Committee language helps the morale of the National Weather Service personnel and encourages continued dedication to providing excellent service to the users of this program. To this end, we again recommend that funds be appropriated at current funding levels, with appropriate increases for inflation and employee benefits.

Respectfully submitted,

Mr. Clyde Nef
Manager
California Raisin Advisory Board

STATEMENT OF THE CALIFORNIA-ARIZONA CITRUS LEAGUE

My name is William K. Quarles and I am President of the California-Arizona Citrus League ("The League").

The League is a voluntary, non-profit trade association composed of marketers of California-Arizona citrus fruits. Members are farmer cooperatives and independent shippers of over 75% of the fresh citrus fruit produced in Arizona and California. These growers produce oranges, lemons, grapefruit, tangerines and limes.

The League once again appreciates the opportunity to present its views on a matter of industry concern, namely the need to preserve the Fruit Frost Forecast and Agricultural Weather Advisory Service Program.

We applaud the language in the Conference Report for the fiscal year 1986 stating:

> The conference agreement includes the restoration of funding for the Agricultural Weather and Fruit Frost Advisory Program Services proposed for elimination in the National Weather Service. The conferees expect the Department and the Office of Management and Budget to heed the resolve of Congress in maintaining these important programs year after year and caution the Administration against submitting proposals to eliminate these programs in future years.

We regret that the Administration has not seen fit to take this advice and has once again sought elimination of this important and highly cost effective program. We strongly urge this committee to restore necessary funds for this program.

The Fruit Frost Program, administered by the National Oceanic and Atmospheric Administration continues to provide citrus and fresh fruit and vegetable growers in California, Arizona, Florida and Texas with detailed site-specific minimum temporature forecasts and other advisory services that support implementation of measures for avoiding or lessening frost damage to crops. While "zone forecasts" issued by the nearest National Weather Service forecast office for the areas involved include both maximum and minimum terperature projections, such forecasts are not site-specific and thus, are of marginal use to farmers now served by the Fruit Frost Program. For example, in parts of California and Arizona, a great many variations of climate can occur over a small land area due to distinct changes in the topography. With site-specific forecasts, growers would have the advanced warning needed to determine if and when frost equipment would be required.

The Fruit Frost Program is staffed with trained agricultural meteorologists who monitor conditions which could damage crops. Information is gathered on a very detailed basis--often down to the square mile--and is dissemenated to interested persons through television, radio and telephone recorders. For example, the California Fruit Frost Service is able to cover those areas where frost sensitive crops are grown, through a network of eight regional and nine district offices stretching from the Northern Sacramento Valley to the Mexican border. Of the $15 billion agricultural production in California, over $1 billion is frost sensitive. The estimated annual crop-loss savings in California alone approaches $70 million.

The National Weather Service estimates that there are approximately $1.6 billion in weather-related crop losses each year. In addition, weather impacts other areas of agriculture by causing reduced yields associated with plant and animal diseases, insects, pollution and water use. These additional weather-related losses are estimated by the National Weather Service at $9 billion annually. While these loses cannot be avoided entirely, it is possible to reduce agricultural losses significantly through better forecasts and information.

The Fruit Frost Forecast and Advisory Program in California has been in existence for over 60 years, serving many segments of California agriculture. Program audits have shown that of all the weather service programs, (which provide an estimated return of $20-30 in crop and livestock savings for every dollar spent) the Fruit Frost Program has one of the highest cost-benefit ratios. Additionally, the Fruit Frost programs provide much more than minimum temperature forecasts. It provides complete weather advisory forecasts to the agricultural community. It also provides information on spray and dusting weather, winds, high temperatures, humidity, rainfall, rainfall amounts, and orchard dry times.

The National Weather Service Fruit Frost Program, in cooperation with various state weather service programs, has been successful and cost effective. The National Weather Service and the Central California Weather Watch program have continued to cooperate to prevent significant losses in the citrus industry.

The information provided by the Fruit Frost Program is also of importance to the various Integrated Pest Management (IPM) programs which have been implemented in the past several years. An important factor in these IPM programs is accurate and timely weather data. Without good weather data, we cannot accurately predict insect and disease life cycles. Therefore, we cannot effectively time control measures where warranted.

The members of the League share this committed concern that the Administration continually propose elimination of this vital program. Such actions undoubtedly make it difficult to maintain and recruit quality personnel and strong Congressional support is needed to keep experienced personnel in this program. The Congress has restored funds for the program recognizing that the benefits produced by the program far exceeded its small cost. In addition, we continue to believe that it would be very difficult, if not impossible for this program to be operated by the private sector without an interruption in service. It must be remembered that even one year's break in service could prove disastrous to the agricultural community and the consumers of this nation. The successful operation of this program requires skilled personnel to conduct the forecasts together with the technical hardware necessary to develop the required data. Both of these items are not presently available in the private sector.

The League strongly urges the Committee to once again appropriate the funds necessary to ensure that this valuable program continues. We suggest that funds be appropriated for the program, at current levels, with the appropriate increases for inflation and employee benefits.

Respectfully submitted,

William K. Quarles, Jr.
President
California-Arizona Citrus League

City of Los Angeles Department of Airports

Board of
Airport Commissioners

Robert A. Chick
President
Maria D. Hummer
Vice President
Johnnie L. Cochran, Jr.
Jerry B. Epstein
Samuel Greenberg

Clifton A. Moore
Executive Director

May 12, 1987

The Honorable Ernest F. Hollings
Chairman, Senate Appropriations
Subcommittee on Commerce, State,
Justice and Related Agencies
S-146A Capitol
Washington, D.C. 20510

Dear Senator Hollings:

It is my understanding that the Appropriations Subcommittee on Commerce, State, Justice and Related Agencies will be holding hearings on the FY 88 appropriations for the agencies under its jurisdiction on Wednesday, May 13, 1987. I would like to request that the following comments of the Los Angeles Department of Airports Board of Commissioners be made part of the record of your Subcommittee hearing.

I would like to communicate our grave concern to members of the Senate with regard to the effects of the recently-implemented Immigration Reform and Control Act of 1986 and the impact thereof on the Los Angeles International Airport (LAX). Normally at this time of year, LAX could expect 45 to 70 immigration inspectors staffing the various terminals receiving international flights. However, due to the implementation of the new law, a large number of those inspectors has been diverted from LAX. The number of available inspectors has dropped to 27, and we have been informed that staffing may further be decreased to 21 inspectors.

This diversion of immigration inspectors at LAX at the commencement of our summer travel season is highly devastating to the orderly processing of passengers at our airport, which, as you know, is one of the Nation's busiest airorts. It is even more disturbing when one realizes that a $5.00 per passenger charge for immigration services is being collected from each arriving passenger and that such a service clearly can not be rendered under the present circumstances.

Senator, we earnestly solicit the support of your Subcommittee in assuring that there is continued adequate funding for the Department of Justice and the Immigration and Naturalization Service that would make the diversion of immigration inspectors from our airport unnecessary. We further request that your Subcommittee consider any measures which would result in a more rapid training of replacement inspectors in order to more quickly and expeditiously fill the needs of the INS.

Thank you for your consideration.

Yours truly,

Clifton A. Moore

Clifton A. Moore
Executive Director

CAM:bw

CURE

CITIZENS UNITED FOR REHABILITATION OF ERRANTS
"A NATIONAL EFFORT TO REDUCE CRIME
THROUGH CRIMINAL JUSTICE REFORM"

May 21, 1987

Sen. Ernest F. Hollings
Subcommittee on Commerce, Justice, State & Judiciary
S 146 A Capitol
Washington, D.C.

Dear Sen. Hollings,

We respectfully request that the attached pamplet "Time to Build? The Realities of Prison Construction" be made a part of the record for non-department witnesses on the hearing of May 13, 1987. This request is on the behalf of our organization, CURE. I have also attached a letter from the publisher.

Sincerely,
Charles Sullivan
Charles Sullivan

The Edna McConnell Clark Foundation
250 Park Avenue, New York, NY 10017 212 986 7050

May 19, 1987

Mr. Charles Sullivan
11 15th Street, N.E.
Suite 6
Washington, D.C. 20002

Dear Mr. Sullivan:

You have our permission to file our booklet "Time To Build? The Realities of Prison Construction" with congressional committees and sub-committees.

Sincerely,

Kenneth F. Schoen
Director
Justice Program

KFS/kw

TIME TO BUILD?

THE REALITIES OF PRISON CONSTRUCTION

This report was prepared by the
Edna McConnell Clark Foundation under the auspices of the Program for Justice,
Kenneth Schoen, *Director*, Stephen Kelban, *Program Associate*.

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INTRODUCTION

You—a legislator, county supervisor, or budget officer—have just been presented with a proposal to build a new prison or jail. The old institution is a decrepit firetrap, and it is so overcrowded that inmates are sleeping on the floors. Everyone agrees something must be done.

In the front of the meeting room, graph lines climb up a chart projecting the number of inmates expected in the future. A lawyer is waving a federal lawsuit filed by the inmates; it has your name on the front. An easel holds an artist's conception of the new facility, and it certainly looks better than what you have now. But they're talking about a lot of money. For each inmate, you calculate, it will cost $40,000, or maybe even $75,000 just to build the place. Then you will have to pay for the guards. Where will you get the money? How much will the interest charges be on it? Where will you put the institution? Can it be built in time to prevent a riot or a court order? Will it still be useful in 20 years? WHAT ARE YOUR OPTIONS?

The national prison and jail overcrowding crisis is, in many respects, a public policy nightmare. States and counties are squeezed between diminishing resources and soaring inmate populations, between public demands for more protection from crime and for lower taxes. Conservatives who push hardest for crackdowns on crime often balk when it comes to paying the prison and jail construction bills. Liberals who complain loudest about "intolerable" prison conditions oppose construction of new institutions.

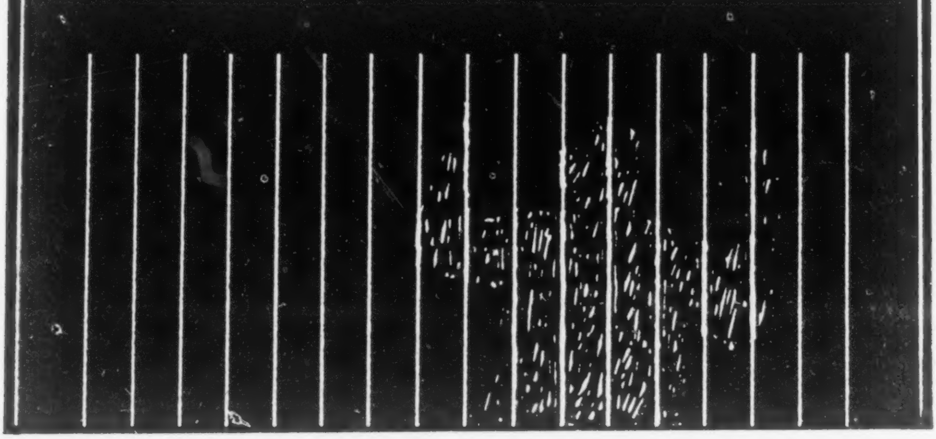
Overcrowding is too difficult a problem to be left to one department or branch of government to solve. But acting in concert, the agencies and individuals that make up the criminal justice system can find ways to initiate change.

To do that, they need information: about the ever-increasing number of people who populate our prisons and jails; about the costs and benefits of incarceration and its alternatives; and about the political risks and rewards of each possible course of action. This booklet will provide at least some of that information. Many public officials around the country are re-examining the worth of traditional corrections practices and their experiences can be helpful to others. Each chapter ends with an example of a place where this process has begun.

Too often, policy makers have concluded that the only humane course open to them is building a new prison or jail that will, at least temporarily, relieve the human suffering caused by overcrowding. But experience suggests that this is frequently an expensive, short-sighted and unacceptable solution. Reasonable and effective alternatives to incarceration are ignored in the crisis atmosphere that envelops correctional decision-making. Even when new construction is necessary, building in an atmosphere of panic almost inevitably produces institutions that are poorly planned and badly designed. The stakes involved — in tax dollars and in human lives — are too high for hasty or ill-considered action.

CHAPTER ONE:

A TIME FOR CHOICES



The prison and jail overcrowding crisis of the last decade caught most public officials by surprise. The numbers of state prison and local jail inmates had declined during the 1960s. Few state or country governments were alarmed when that trend reversed in the early 1970s. But then the trend accelerated quickly. Between 1973 and 1983, the prison population in the U.S. doubled, far outstripping the capacity of institutions.[1] Consequently, at least 38 states are now facing court orders to eliminate prison conditions that amount to cruel and unusual punishment; a quarter of the nation's jails have been under similar court orders in recent years.[2]

The overcrowding crisis has produced an unprecedented national spending binge on corrections construction. From 1970 to 1980, construction expenditures rose from $74 million to $450 million; by 1982, they had more than doubled again, to $946 million.[3] A 1981 survey by the Department of Justice found that 47 of the 50 states were in the process of building new prisons.[4] Another survey lists 717 new prison facilities (six federal, 231 state, 480 local) under construction or consideration, at a cost of at least $5.6 billion over the next few years. These would house some 132,829 inmates.[5] The state of California alone plans to spend $1.2 billion on state prisons (not counting jails) during the next five years, to keep pace with a projected doubling of its prison population.[6]

These figures are dramatic, but they mask two even more startling facts:

- The cost of construction, staggering as it is, is only the beginning. Reported cost figures such as those cited above do not include architects' fees or financing costs, which can double or triple the cost to taxpayers. Moreover, the cost of building a prison is only the down payment; operating costs will soon outstrip it. The operating costs for 100,000 new prison beds would be $70 billion over the next 30 years—not counting inflation.
- No amount of construction is likely to catch up with the overcrowding problem. The volume of new inmates is simply too great, and their terms are too long. Texas, California and Florida could build a new 500-bed prison every month and never reduce overcrowding, if recent trends continue.

In addition, most of the construction of the past decade has produced institutions that are outmoded, often a disaster for staff, inmates and administrators. States and counties that have chosen to build new prisons have been tormented by protest marches from neighbors of the new institutions, by cost overruns and delays, and by new facilities that stand empty because there is no money to staff them. Most new prisons and jails have been built according to designs that were obsolete a quarter-century ago; those that have attempted to use new technology have been plagued by escapes and breakdowns. Many have been double-celled since the day they opened, and declared unconstitutional within a few years.

Oklahoma's Conner Correctional Institution, for instance, was opened in 1978 as a model institution designed for 400 inmates. By the summer of 1983, it bulged with 747 prisoners, kept in poorly ventilated cells where temperatures hovered between 105 and 125 degrees for almost a month. The institution periodically ran short of food and water. In August, the inmates rioted. One prisoner was killed, 19 inmates and three guards were injured, and six buildings were heavily damaged or destroyed.[8]

'The Pendulum Is Swinging Back'

In state after state, responsible leaders have become alarmed at the seemingly endless spiral of overcrowding-construction-overcrowding. "What we're doing is pure folly," Kentucky Corrections Secretary George Wilson warned legislators as he presented them with the budget for housing the state's inmates. He pointed out that up to 40 percent of the state's inmates could safely be put on probation, work release or other programs, but he lacked the authority to do so. "The public is buying a false bill of goods and paying a hell of a price for it," he said.[9]

In 1983, the Oklahoma State Legislature approved a 16.5 percent increase in the state corrections budget at the same time it cut the budgets of other state agencies six percent across the board. Six new prisons are being planned. During debate on the appropriations bill, one of its sponsors warned his fellow legislators: "We're creating a growing monster. If we keep it up, we'll have to tap the taxpayers for the cost of a new prison every nine months. We might as well get ready to cut highways, cut education, cut higher education . . . if we keep on."[10]

In California, State Senator Robert Presley sponsored several of the tough sentencing bills, passed in the 1970s, that helped fuel that state's prison population increases. Now, in the words of the *Los Angeles Times*, he has become "something of a lonely crusader for sentencing reform." Presley recently said about previous sentencing policies, "One of the big mistakes that was made lies right at the doorstep of the legislature. I was a big part of it and I'll admit it any day."[11]

The last two years seem to have produced a move away from massive construction schemes, particularly in states where prison populations have been growing fastest.

In Texas, where the prison population has mushroomed to become the largest in the nation, the legislature in 1982 was confronted with a $1 billion price tag to build a series of bargain-basement institutions that would have been double-celled the day they opened. Instead, the legislature recently enacted a package of reform laws that, in the words of one observer, marked "a phenomenal philosophical leap for the state."

During 1983, at least half a dozen states, including Tennessee, Arkansas and South Carolina, enacted "emergency powers" laws that permit corrections officials to designate inmates for early release when the state prison population exceeds a legally set capacity. Michigan and Iowa pioneered such legislation in 1981. California's Governor George Deukmejian, a conservative former attorney general, has requested such a measure for his state.

In Florida, an amendment to the state's Corrections Reform Act of 1983 greatly liberalized the granting of "good time" to inmates with clean prison records. Within six months of the date the law took effect, the state's prison population had declined by 2,000 inmates.

Nascent community corrections programs were greatly expanded in Indiana and Florida in 1983. In Indiana, the measure was led by the state senator who in 1977 had sponsored a tough sentencing scheme that sent many more people to prison.

These are all states that have traditionally taken a hard line on crime and punishment. In each of them, the key to implementing non-construction approaches has been the support of conservative leaders, who had previously backed any measure that promised to punish criminals through more incarceration. For most of these leaders, the price tag for relying solely on imprisonment had finally climbed too high. "The pendulum is swinging back now in the other direction," said Tennessee State Senator Bill Richardson, a conservative Democrat who is a leader in pushing for re-examination of the state's correctional policy. "We've been paying for vengeance, and we're finding it very expensive and counterproductive."

Crime and Capacity

There is, in fact, little apparent connection between the rate at which serious crimes are committed and the use of incarceration for punishment. For example, Minnesota and North Carolina have nearly equivalent crime rates —the number of reported serious crimes per 100,000 population—but North Carolina's rate of imprisonment is more than five times greater than Minnesota's.[12] Neighboring states sometimes vary dramatically in the rate at which they keep people in local jails, even when demographics, culture and crime rates are similar.

In 1980 researchers at Abt Associates, a social science research firm in Cambridge, Massachusetts, submitted a five-volume report commissioned by Congress on the future needs of the nation's corrections system. They concluded that prisons are indeed, in the jargon of the field, "capacity driven" — that is, the greater the capacity of the penal system, the greater the rate at which people are sent to it. They noted that, on the average, new facilities were 30 percent over capacity within five years. In other words, it seems unlikely that states can build their way out of the overcrowding crisis.[13]* Increasingly, public officials have learned this lesson as well.

This does not mean that states are going to stop punishing people who commit crimes; it does mean that some are trying to reserve prison space for violent individuals and find safe and inexpensive punishments for the others. The strategies now being discussed — restitution, community service, intensive probation — are, by and large, not new; but because they cost so much less than imprisonment, they have acquired a new luster.

Who Are the People in Prison?

Most people agree that violent acts such as homicide, rape, robbery and assault are the most serious crimes. The most recent census of prisoners in the U.S. showed that only 47 percent were incarcerated for such crimes; one-third had been imprisoned for property offenses and 20 percent for crimes against the public order (including drug offenses). In Arkansas, nonviolent offenders outnumbered violent ones by three to one; in Mississippi, Kentucky, Missouri and Wyoming, the ratio was two to one.

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*Researchers at Carnegie-Mellon University challenged this conclusion, but after reworking the study to meet their objections, the Abt researchers said their findings were still valid.

While the public has been given the impression that courts have become more and more lenient, the percentage of people sent to prison for nonviolent offenses has increased since the mid-1970s. Experts agree that the major causes underlying prison overcrowding have been the increase in the number of nonviolent offenders sent to prison and the longer terms they receive.

This imbalance is even more pronounced in America's jails. "Jails in too many instances are used as a dumping ground for the social misfits of a community — the mentally ill, the alcoholic, the narcotics addict and the runaway juvenile, to mention a few," the director of the National Sheriffs' Association recently testified.[14] Only 30 percent of those in jails have been arrested for violent offenses. On any day, about 40 percent of jail beds are occupied by people accused only of public drunkenness.

Someone charged with a nonviolent offense can still be a threat to the public safety and warrant incarceration. There clearly are many prisoners, however, who can be safely diverted to alternative programs.

Even for those who must be sent to prison, there can be cheaper options. More than half of American prisoners are kept in maximum-security facilities (which cost three times as much to build and twice as much to operate as minimum security prisons), but experts agree that only 10 to 15 percent of inmates really need this level of security. A re-examination of the nature of the prison population can open up a wide range of alternatives to building maximum-security prisons.

The Political Game

For too long, the policy debate on imprisonment in America has been tragically myopic and strait-jacketed by ideology. "Get-tough" laws and policies — mandatory prison sentences, longer terms of confinement, reduced discretion for judges and parole boards — have been adopted with little or no thought to their real deterrent effect on crime, their cost, or their effect on prison and jail overcrowding. Debates over proposed prison and jail construction have been little more than political litmus tests of attitudes about crime and its causes. This situation, one observer notes, has led to "a polarized debate in which the right says, 'Just build,' and the left says, 'Don't build,' and neither side shows much inclination either to compromise or understand the very complex nature of what is at stake."[16]

Fear of public opinion often thwarts attempts to elevate the corrections debate. A recent survey of state and local officials involved in corrections showed that most were willing to consider various means to reduce reliance on incarceration, but they believed such alternatives are unpopular with the public.[17] But the fear of the merciless, vengeful public can be exaggerated. A recent study of Maryland correctional policy found strong public support for supposedly "unpopular" community corrections measures; state officials, the study found, often believed the public was less tolerant of alternatives than it actually was.[18]

The overcrowding crisis has thrust corrections policy onto the center of the political stage. Policy-makers are discovering that the size of the prison population is not the immutable result of demographics and crime rates, but is a matter of choice. Leaders are asking basic questions about the costs and benefits of incarceration; they are regaining control of the corrections debate and reframing it in more realistic terms. While this process does not lead to headline-grabbing slogans, it can have long-term political benefits. "A politician, if he is seriously in that business, doesn't want solutions that don't work," said Don Murray, the director of the criminal justice program for the National Association of Counties. "He needs solutions that are going to be good in the long run."

In some instances, part of the long-run solution to the overcrowding crisis will involve building new prisons and jails. But in many cases, that costly and problematic step can be avoided. In all instances, there must be a more profound commitment to thinking about the consequences of prison and jail construction than there has been in the past. Planning a prison or jail that will be useful for several decades is not a simple task. It requires both forward-thinking architectural design and a clear sense of what society's needs will be in the next century. It is not a task to be undertaken in a crisis atmosphere; it probably cannot be completed in time to relieve today's overcrowding. But an inappropriate prison will be a thorn in the side of future generations, an unpleasant monument to a previous generation's mistakes.

SOUTH CAROLINA:
'Don't Be Afraid of Public Opinion'

"I've been in politics for a long time," said State Senator John Drummond, a conservative Democrat from Greenwood, South Carolina. "If there's one thing I've learned, it's that ignorance will beat you every time."

Drummond is a powerful figure in South Carolina state affairs; he is the chairman of the State Reorganization Committee, a joint executive-legislative commission with far-reaching authority. He is also the chairman of the South Carolina Prison Overcrowding Project. The project, a panel of key state and local officials and private citizens, was created in 1981 to find solutions to the state's severe prison overcrowding problem. Dispelling ignorance about that problem, both in the legislature and among the citizens of the state, was one of the panel's primary tasks.

"When we started out, I was probably the most conservative member of the Senate," Drummond said. "I was in favor of putting more of these s.o.b.'s in jail, not turning them loose." That has certainly been the prevailing attitude about imprisonment in South Carolina for the last decade. The number of state inmates there tripled between 1972 and 1982; at the end of 1982, the prison population was 9,161. The state's incarceration rate of 270 per 100,000 is one of the highest in the nation.[19]

But a closer look at the inmates serving time in the state's prisons surprised Drummond and other members of the prison overcrowding panel. South Carolina sends everyone sentenced to 90 days or more, including misdemeanants, to state prison. This was originally a reform measure designed to remove lesser offenders from the harsh and primitive conditions of county road camps. Although corrections officials are unable to say precisely how many misdemeanants are in state facilities, a survey made for the overcrowding panel showed that more than 400 inmates were admitted to the corrections system during fiscal 1982 for the offenses of writing bad checks and failing to make child support payments.[20] About 40 percent of the state's prisoners have been convicted of non-violent property offenses.

"When I got the facts," Drummond said, "I was solidly sold on going the other way," that is, finding punishments other than imprisonment. "I could see that we had been totally wrong in the direction we had been going. I didn't see any point in ruining someone's life by sending him to prison for a first-time minor offense."

The panel eventually produced two short-term remedies for overcrowding that would require legislative action. One was an emergency powers act, that would legally establish a capacity for the state prison system of 7,630 inmates, and permit the release of inmates when that capacity was reached or exceeded. The other was the creation of a sentencing guidelines commission. It will report to the legislature in 1984 on a proposed sentencing system that will set up uniform sentencing standards that take the prison system's capacity into account.

All of the panelists fulfilled pledges to lobby for the measures; they travelled throughout the state, speaking before civic clubs and newspaper editorial boards. "We wanted to take the fire away from the opposition before these measures went to the floor," Drummond said. "We wanted to let the people know that we were not talking about turning rapists loose, or turning murderers loose."

The support of one panel member in particular became especially important. Bill Traxler is a tough law and order "solictor" (the South Carolina term for state prosecutor) from Greenville. Roughly 25 percent of the inmates in South Carolina prisons have been prosecuted by his office. "I personally picked him for the panel," Drummond said. "He has been a great voice for building more prisons. I knew I would rather have him on the inside with us than on the outside against us." Drummond's foresight paid off in the final hours of the legislative session, when Traxler made last-minute phone calls to members of the House of Representatives, persuading them to lift objections to bills drafted from the panel's recommendations. The measures passed in the House in the final hours of the last day of the session.

Drummond has some advice for legislators in other states who want to change the direction of their corrections systems. "First," he said, "arm yourself with the facts. And don't be afraid of public opinion. The public will be with you if you give them the facts. I don't know of a more conservative state than South Carolina, and we were able to get the public behind us."

CHAPTER TWO:

TRUE COSTS AND BENEFITS

In any cost-benefit analysis of prison construction, there are two sides to the equation: balanced against the financial cost is the question of what benefit the public derives from a prison. While public debate has generally focused on ideological aspects of the problem, economists have increasingly begun to scrutinize the costs of corrections.

TRUE COSTS AND FALSE HOPES

The cost of building a prison is staggering. The cost of running it is astounding. Added together, they are enough to shock anyone.

Various cost estimates are thrown around: from $25,000 to $125,000 per cell to build, from $7,000 to $30,000 per inmate to run for a year. These are the official estimates, and they are bad enough. But in all likelihood they understate matters considerably. Recent economic analyses, for instance, show how a $30 million "construction cost" for a new 500-bed state prison, high as it is, is only the beginning.[21] Over a 30-year period, it could easily cost the taxpayers of the state $350 million.

Cost estimates provided by corrections departments need close scrutiny. They often underrepresent the final bill. It's not that the officials are deceitful, but traditional methods of estimating costs do not take into account a number of factors that, these days, can add up to a lot of money. Looking at the true figures may make officials think twice about building a new institution, or about its size.

Construction Costs

Because they must be self-contained miniature cities built of steel and concrete, prisons are inordinately expensive to build. Construction costs are often reported on a per-cell or per-bed basis for purposes of comparison, but this represents far more than the cost of building living areas; it includes the cost of offices, kitchens, dining rooms, recreational facilities, industry areas, records rooms, classrooms — everything contained within the prison fence, including the cost of the prison fence itself.

Surveys of construction costs show some variation depending on the region and type of facility. The 1978 Jail Census[22] showed a range of $20,500 in the South to $41,600 in the West as the per-bed construction cost. Another survey showed average construction costs of $18,500 per bed for a minimum-security facility, $27,000 per bed for a medium-security facility, and $46,500 per bed for a maximum-security facility.[23] All these prices are in 1978 dollars; the totals would be higher now.

Sometimes the cost has been much higher. Virginia's 360-bed Mecklenberg Correctional Center cost $55,600 per bed in 1978.[24] Contra Costa County's new jail cost $64,000 per bed in 1981.[25] And New York City paid $100,000 per bed to rebuild the Tombs jail in Manhattan.[26]

These costs all apply to facilities built to conform to nationally accepted standards, such as those supported by the American Correctional Association. The most significant of these standards, such as those calling for single cells of at least 60 square feet, exterior light in all cells, and a location near an urban area, can be expensive to meet. But a new jail or prison that ignores these standards, while cheaper in the short run, may bring court orders, within a few years, and early replacement at much greater expense.

Hidden Construction Costs

These reported figures do not cover all the costs associated with building a new facility. Typically, they do not include items such as acquiring a site, site preparation (paving, landscaping, parking lots, bringing in utility lines and sewage), architect's fees, construction supervision or furnishings. An analysis of a proposed Connecticut prison, with a construction cost reported at $50,000 per bed, showed that the following expenses were not computed in that figure:

Architect's fee	8%
Construction supervision	2.3%
Agency fees	3.5%
Equipment	10%
Insurance	1%

Together, these added up to almost 25 percent of the reported construction cost, raising it from $50,000 to $62,000 per bed.[27]

Cost Overruns

Many "construction cost" figures used in policy discussions do not take into account the inflation that will inevitably occur during the life of the project; in recent years these have raised construction costs ten percent per year. Other unexpected expenses also occur, as they do with most public works projects. In a survey of 15 states, cost overruns on prison construction averaged 39 percent over the initial budget.[28]

In Wayne County (Detroit), Michigan, a special tax raised $53.6 million to pay for building ($37 million) plus equipping, staffing and operating a new jail. But before construction was finished, the revenues were entirely used up and a $1 million deficit was incurred — before equipment, staff or operating costs had occurred. The county supervisors had not been informed of the cost overruns as they happened.[29]

Financing Costs

Construction cost estimates do not include financing charges. A traditional way of financing capital investments for many governments is issuing bonds. The debt-service costs of retiring these bonds must be included in any discussion of the true cost of construction. Just as a mortgage on a home will end up costing a home owner several times the purchase price, so governments pay for prisons several times over. Bonds sold for 20 years at 10 percent interest will *triple* the construction cost; so will 25-year bonds at eight percent. If, in a bad market, a government has to sell 12-percent bonds over 25 years, then the cost will quadruple. In 1981 New York State proposed to sell 40-year bonds to finance its prison construction plans; the high finance charges were a major reason the voters turned down the bond issue at the polls.

Hidden Operating Costs

"The initial shock of first costs for a correctional facility is relatively mild compared to the bill you will get to operate it," one corrections agency warns.[30] By opening a new prison or jail, a government is committing itself to pay for operating the facility over many decades. Many experts have observed that it costs more to send a youth to prison than it would cost to send him or her to Harvard. How much more it costs is not generally reported.

Most public officials are aware of per-diem operating costs—how much it costs to keep one inmate in an already-built prison for one day. As reported by state departments of corrections, these range from $11.83 in Texas to $58.72 in Massachusetts.[31] These figures are determined by dividing the budget of the corrections department by the number of inmates. The wide discrepancy is largely due to the level of staffing — a lack of staff helped bring Texas under "the most sweeping and detailed court order in the history of prison litigation."[32]

These per-diem costs are often unrealistic. A 1982 report by the National Institute of Corrections notes: "Any person who undertakes to find out what his community spends operating its jail should be very wary of per-diem costs reported by jail personnel. Such figures are almost always low."[33]

Independent analyses of corrections budgets, using standard accounting techniques, have demonstrated that many costs associated with imprisonment are hidden — again, not through any sleight-of-hand by corrections officials, but because of the peculiarities of state or local budgets. In state prison systems, items such as employee fringe benefits and services obtained from other state agencies are not included in the corrections department budget. Neither are federal grants, which pay for services the state would otherwise have to support. A study of Indiana state prisons showed actual expenditures were a third greater than those reported in the department's budget.[34] An analysis of the New York State Department of Correctional Service's 1978 budget of $218 million showed that it did not include:

Fringe benefits and pension contributions, included in "miscellaneous budget": $60.3 million
Federal grants for various programs: $4.7 million
Psychiatric services provided by the Department of Mental Health: $1.5 million
Drug treatment supported by a private agency: $77,000

The real cost to taxpayers was $285 million; the official budget had understated costs by 23 percent.[35]

Long-Term Costs

Even without adjusting figures upward with hidden costs, the long-term price of operating a prison or jail is much, much greater than the construction cost. "It is a startling fact that over a 30-year period the construction cost of a new jail, as exorbitant as it may seem, is only about one-tenth of what it will cost to both construct and operate the jail for that same period. If a new jail costs a community $5 million for construction, the 30-year operating cost will be about $45 million in staff salaries, food, maintenance, and other items."[36] The long-term costs of state prisons are even greater. The director of the National Institute of Corrections stated to Congress in 1983: "When a legislature decides to spend, say, $100 million in new prison construction, it is commiting the taxpayers of that state to $1.6 billion in correctional expenditure over the ensuing three decades. Construction is only six percent of the charge to taxpayers over 30 years. For every dollar of construction, there will be $16 in operating costs. The construction is only the down payment."

While these funds may help the economy of areas where prisons are located, they could be used more productively in education, for example, or health care. In addition, once a prison is built, a political constituency develops to keep it in operation; it would be very difficult for future officials to close or scale down the prison, even if the need for it were to wane.

Other Costs

The decision to lock someone up involves other costs that frequently are ignored:

- Land — Although states and cities frequently build institutions on land they already own (as much to forestall opposition as to save money,) the value of the land ought to be counted in the total cost.
- Welfare — Locking up an offender sometimes means that the spouse and children must receive public assistance. In the 1978 Jail Census, four of every ten inmates were supporting at least one dependent. Based on the number of inmates who had families to support, the North Carolina Citizen's Commission on Alternatives to Incarceration estimated welfare costs for the state at $18 million in 1979, $3.35 per prisoner per day. (This figure is probably high, since some families were already on public assistance.)
- Legal services — An increase in the number of prisoners means that they must, in many states, be provided with free legal assistance for appeals and civil matters. It will certainly bring even more of the inmate-written lawsuits that are clogging the courts.

The Bottom Line

One economist has computed the true cost of constructing and operating a hypothetical 500-bed medium-security prison, using real designs and construction estimates. She begins with a base construction cost of $61,015 per bed, or approximately $30 million, for building the basic facility (without

hidden costs). This is the cost that would probably be presented to legislators and the public for discussion. She then adds the hidden costs, on a per-bed basis:

Base construction cost	$61,015
Architect's fees (8%)	4,881
Change order contingency fee (5%)	3,050
Construction supervision fee (2.3%)	1,403
Agency fee (3.5%)	2,136
Equipment and furnishings (10%)	6,101
Insurance and bid (1%)	610
Site preparation costs (5%)	3,050
	$82,246

The total prison cost rises to more than $41 million. (This figure does not include purchasing land for the site.) Rounding the construction cost off to $40 million, she then phases construction over three years from proposal to opening — an optimistic figure — and finishes with an inflation-adjusted cost of $45.3 million.

If the facility must be financed through 20-year bonds at ten percent interest, the total construction cost will be at least $135 million.

Using a responsibly conservative estimate of operating costs of $14,000 per inmate per year, she estimates that it will cost $7 million per year to run the institution. The 30-year cost to the taxpayers for construction and operation will be $350 million — all for the "$30 million prison."[37]

Applying similar techniques to actual expenditures, the Minnesota Citizen's Commission on Crime and Justice has calculated the true cost to Minnesota taxpayers of locking up prisoners. "When direct operating costs, indirect operating costs, and construction and financing costs are included, the daily cost of housing a person in a Minnesota state correctional institution is nearly twice the reported figure. For example, housing a person at the Minnesota Correctional Facility at Lino Lakes costs $103 per day rather than the $62.42 reported by the State of Minnesota; housing a person at the Minnesota Correctional facility at Stillwater costs $70 per day rather than $38.49." Using the average time served, the commission computed the cost of a prison sentence at $57,456 for males and $81,900 for females. (The women's figure is higher because it includes the cost of a new prison.)[38]

Cutting Corners

Faced with the enormous cost of new corrections construction, states and counties have tried to find shortcuts. The results do not appear promising; they often lead to inappropriate housing, with greater potential for unrest and escapes. Intended to provide short-term relief for a temporary overcrowding situation, these expedients can turn into permanent headaches.

- Additions — Adding housing to existing prisons can hold down per-bed costs. Add-on costs (without hidden costs) for recent additions ranged from $7,800 per bed in South Carolina to $12,900 per bed in Arkansas to $30,000 per bed in Arizona.[39] These figures seem reasonable by comparison with those cited earlier, but they may be misleading. Supportive services can only be stretched so far before they break down; doubling the number of inmates without providing extra classrooms, jobs, dining facilities, recreation or libraries is asking for trouble.[40]

- Renovations and conversions — *American Prisons and Jails* cited a variety of buildings that had been converted to prison space: classrooms and industrial space within existing institutions in New York and Montana turned into housing areas at costs of $6,783 and $6,000 per bed, respectively; motels, junior high schools, a hospital and an apartment complex converted to minimum-security facilities at $4,500 per bed in Oklahoma. But these conversions must be carefully examined. Maryland studied converting an industrial complex into a prison and discovered that it would cost ten percent more than new construction because of the difficulty of moving walls, adding security features and building areas such as kitchens and gymnasiums.[41]
- Temporary housing — Tents or trailer-type units house low-security inmates in many states, particularly in the South. While they are cheap, they require plumbing, heating and staffing expenditures that are higher than for permanent construction. They are limited in their potential, since they cannot house high-security inmates. They may be a responsible measure when a state is faced with a short-term overcrowding problem and does not want to build prisons that will endure for half a century or more. But "temporary" facilities tend to stay in use long after their life expectancy is over, and if they merely serve to postpone a decision to build a new institution, they are an added expense, not a saving.
- Modular construction — An entire sub-industry of prefabricated prisons has mushroomed in recent years. "Half the cost, half the time," advertises one company. Another promises "instant security," with overnight delivery. Some offer pre-cast concrete sections; others sell entire cells that can be stacked next to each other. Some claim costs as low as $16,000 per bed, and a quarter the completion time of conventional construction.[42]

One should view these claims with skepticism. These figures refer only to the cost of housing areas; they do not include the cost of support services. They also do not include the costs of site development, foundations, plumbing or electrical connections. Maximum life expectancy of these units is 30 years or less.[43]

Alternative Financing

Many states and counties have found it difficult or impossible in recent years to obtain the legal authority they need to take on the massive public debt required to finance new prison and jail construction. Some cities, counties and states have legal limitations on the debt they can incur, and are already at or near that limit. In other jurisdictions, voters have refused to approve the general obligation bonds that are the usual means of financing large-scale public works projects. In 1981, for example, a $500 million prison and jail bond issue was defeated in New York State, and local jail bond issues lost in Lincoln, Nebraska, St. Louis, Missouri and Linn County, Oregon.[44]

Some local governments are attempting to overcome these obstacles through construction "lease back" arrangements with other governmental bodies or private lessors. There are obvious attractions to this approach, but there are also drawbacks.

In 1983, for example, the New York State Legislature authorized the state Urban Development Corporation (UDC), a public authority normally concerned with the redevelopment of depressed neighborhoods, to sell $380 million in bonds for prison construction. The state Department of Correctional Services would then lease the completed prisons at an annual fee equal to the debt service on the bonds. Once that debt was retired, the corrections department would purchase the prisons for a nominal fee.

A coalition of citizens groups, however, has challenged this plan in state court. They contend it is an attempt to circumvent the 1981 defeat of a $500 million prison and jail bond issue. They also say that the scheme violates the charter of the UDC, and that taxpayers would be forced to pay $42 million in premium interest charges for the UDC bonds because of that authority's poor bond rating. The state comptroller opposes the plan for that reason as well.[45]

A variation on this idea calls for private investment financing for prison and jail construction. Major brokerage firms have become interested in the idea; in 1983, the public finance group of E.F. Hutton & Co. published a short booklet entitled *Innovative Alternatives to Traditional Jail Financing* that describes lease back arrangements. Officials in California are debating a proposal to seek up to $700 million in private investment for prison construction.

In late 1982, the supervisors of Jefferson County, Colorado, stymied by the voters' rejection of a proposed sales tax increase to finance building a new jail, issued $30.2 million in "certificates of participation" for sale to private investors to raise money to build a new jail. The IntraWest Bank of Denver will be the trustee of the jail, to be completed in 1985. The county will make semi-annual rental payments totalling $5 million per year to the bank for nine years, then assume ownership of the jail; payments will come from the county's operating revenues and will not require voter approval.

The certificates are similar to general obligation bonds in that the interest income on them is tax exempt. This increases their attractiveness to investors. There is a major drawback for the county, however. Because the certificates are not backed by the ironclad legal guarantee of payment through property tax revenues, as bonds are, they receive a less favorable bond rating. That, in turn, increases the amount the county must pay in interest on the certificates. This can be a serious impediment for local governments. City officials in Philadelphia, for example, investigated the possibility of using private financing to build a new jail there, and rejected it because of the higher interest rates that would be required.

Private Management

There is also increasing interest in the idea of turning over the entire problem of designing, financing, building and operating prisons and jails to private entrepreneurs. Companies in Denver, Colorado, and Nashville, Tennessee are promoting this idea in talks with corrections officials around the country.

Like all new ideas, this one deserves examination before it is embraced. Having a private contractor deal with all the headaches of corrections administration is certainly a seductive vision for harried public officials. But even those promoting the idea admit the legal authority to permit private jail management is murky in most states. And civil rights lawyers are quick to point out that public authorities would still be liable for any legal violations that would occur in privately managed jails. Private managers might be tempted to cut costs and services in order to maintain profits. And the success rate of new businesses is not reassuring. A jail management company that was poorly managed or under-capitalized could present public officials with problems that would make their current ones seem simple by comparison.

Federal Aid

Many state and local officials believe that only the federal government has the resources to subsidize a major prison building effort. But, given the current economic climate, such relief seems unlikely. In 1981, the Attorney General's Task Force on Violent Crime announced that its number-one recommendation was an appropriation of $2 billion in federal aid for prison construction; the Reagan Administration quickly disassociated itself from the suggestion because of the fiscal implications. Early in 1984, the Senate passed a comprehensive crime bill that would set up an agency to assist states in building prisons, but its funding was capped at $25 million per year — not enough to build even one state prison. Newspaper reports said the House was unlikely to approve the bill because of other provisions.

Opportunity Costs

In recent years, economists have begun to assess public spending in terms of lost opportunities. Prison construction costs generally compete against other capital needs: schools, hospitals, roads and bridges. Prisons can quickly consume huge amounts of capital. Maryland devoted one-third of its capital budget for fiscal year 1982 to prison construction.[46] Operating costs compete against other hard-pressed public services: education, police, public health, libraries. The 1981 report, *American Prisons and Jails*, noted: "For every person who goes to prison, two people don't go to college."[47]

In many states, other needs have overtaken prison construction. In Connecticut, collapse of a bridge on Interstate 95 in the summer of 1983 forced legislators to reconsider prison building proposals.[48] In many other states, such as Arkansas, Mississippi, Texas and Oklahoma, governors have been elected on platforms to improve education, only to find that their plans are jeopardized by proposals for new prisons. People are beginning to realize that, as Illinois Governor James Thompson put it, "A dollar for corrections is a dollar that doesn't go to someplace else."[49]

Social Costs

The indirect effect of prisons on society must also be considered. Many observers find prisons to be cesspools of race and class bias, of psychological degradation and dehumanization, that do little honor to society. Reliance on a policy of heavy imprisonment for the poor offers the prospect of increasing the divisiveness of society.

In recent years, the implications of imprisonment policy for race relations have come into focus. Blacks are 6.6 times as likely to be in prison as whites.[50] In 1982, 45.6 percent of the nation's prison population was made up of blacks, versus 11.8 percent of the total U.S. population. This has a serious impact on the social structure of black communities, and is a prospect that thoughtful people of every political persuasion find disturbing.

Many reformers believe that focusing on crime control through imprisonment ignores the conditions that really affect crime rates. William Nagel sums up this position: "We can have order without new prisons if we pursue social and economic justice. We will have chaos, even with a thousand new prisons, if we deny it."[51]

QUESTIONABLE BENEFITS

Against these steep financial and human costs, policy makers must weigh the benefits that society hopes to derive from the incarceration of suspected or convicted criminals. Other than the satisfaction of punishing wrongdoers, these benefits are most often defined as the incapacitation and/or rehabilitation of the prisoner, and the deterrence of crime by the example of his punishment.

Incapacitation

Incapacitation is a long word for a simple concept: Lock up enough criminals and because they cannot commit new offenses, crime will perforce diminish. That is, however, easier said than done. A major study of the criminal courts in Columbus, Ohio found that a stringent policy of sentencing every convicted felon to prison for at least five years would have reduced violent crime in that city by only 7.3 percent while increasing prison commitments by 500 to 600 percent.[52]

Currently, there is great interest in a theory of selective incapacitation, which proposes to identify young criminal court defendants who are likely to become career criminals, then short-circuit those careers with especially long prison terms during their most active years. The means of identifying these high-risk offenders include examining their histories of drug use, employment and prior convictions. One supporter of the idea calls it a "kind of post-conviction preventive detention."[53] Clearly, there are ethical and legal objections to selective incapacitation as a sentencing policy; there are practical problems as well. Independent analysis of the statistics compiled in a Rand Institute study propounding the advantages of selective incapacitation show that more than half of the prison inmates the Rand system would have identified as "high risk" robbers and burglars turned out not to be.[54]

Deterrence

The threat of imprisonment seems to have little bearing on the commission of crime. The high rate of recidivism by former prison inmates suggests that even those most intimately aware of the grim realities of penal confinement are not dissuaded by that knowledge from breaking the law. If criminal acts were committed rationally, then perhaps prison would be a deterrent. But most crimes are the products of anger, despair or frustration, and often are committed in a drug- or alcohol-induced haze. Studies have shown that doubling or tripling sentences has little deterrent effect and, in fact, many experts believe that longer prison sentences make inmates more dangerous.

Rehabilitation

Rehabilitation is as old an idea as selective incapacitation is a new one. It has been one of the cardinal principles in American penology since the 1790s, when the world's first penitentiary was established in Philadelphia. Today, however, few would argue that any prison is a hospitable setting for improving the character and conduct of anyone. There are exceptional examples of inmates who change their lives for the better while behind bars, but even in those cases imprisonment is more often an impediment than a catalyst.

Clearly, there are criminals who must be removed from society for our protection. But the enormous costs of imprisonment and the dubious benefits of its broad application suggest that we should use it far more judiciously than we have.

TEXAS:
'A Conservative Group With Progressive Solutions'

In May 1982, the 34,000-inmate Texas Department of Corrections (TDC) momentarily choked on its seemingly limitless ability to swallow new prisoners. Its prison cells and dormitories were full; so were the tent compounds erected at several prisons to shelter an overflow population of more than 3,000 inmates. For five days that month, the TDC simply stopped accepting new inmates. A hastily called special session of the state legislature voted $58 million for the construction of a new 500-bed prison and for the hiring and training of more guards. But legislators were aghast at the TDC's projections of what it would need to build its way out of its overcrowding: 13 new 1,000-bed prisons costing—by the department's estimate—$1 billion.

The governor named a blue ribbon commission of business leaders and state officials to develop less expensive alternatives. Cost, not ideology, was their primary concern. Nevertheless, their report to the governor, published in December 1982, recommended measures like increased funding for halfway houses and restitution sentencing, alternatives that reformers had been advocating unsuccessfully in Texas for years. The commission, said one of its members, State Senator Ray Farabee of Wichita Falls, was "a conservative group that came up with progressive solutions."

Its concern for saving money was shared by the legislature. The Texas economy had been hit hard by the national recession and depressed energy market, and the legislature's primary concern in 1983 was finding a way to increase teachers' salaries without raising taxes. As a result, the TDC's budget request of more than $700,000,000 for new construction over the next two years received unusually rough treatment in the legislature. When the legislature adjourned in May, the TDC had received only $89 million for new construction, with the great majority of that to be spent on repairs and renovations of existing prisons.

At the same time, the legislature increased appropriations for the Board of Pardons and Paroles by 66 percent and for the Adult Probation Commission by 111 percent over the amount spent during the previous budget period. It tripled funding for parole supervision and appropriated more than $26 million for intensive probation and for restitution centers. Texas probation officials hope to divert more than 9,000 offenders from TDC during the next two years through these programs alone. "There was a strong conservative effort in the House (of Representatives) to find alternatives to prison," Farabee said. "They approved measures that the minorities and liberals had always been pushing, but now they were being advocated by conservative rural types." The result, one respected impartial journal remarked, was that "the most extensive prison reforms ever proposed for the State of Texas passed unchallenged during the last weeks of the legislative session."[55]

The blue ribbon committee played an important role in this process. An assistant to Texas Governor Mark White said the commission's work "cleared the way for some (legislative) proposals by neutralizing conservative opposition. There were conservatives on the commission who changed their attitudes as a result of being on it." Other factors pushed the legislature toward change in 1983, he said, but "the commission was probably a catalyst."

CHAPTER THREE:

MANAGING THE SYSTEM

Crime is a disease of the young; the peak age for arrests for property crime is 16 and for violent crime, 18.[57] The aging of the post-World War II baby boom generation in the 1960s was accompanied by dangerous increases in drug addiction and chronically high unemployment for minority youth. Although there is disagreement about the true size of the crime rate increase that resulted, its effects shocked and frightened Americans.

This trend would have increased prison populations in any event. But the reaction to this "invasion" made matters much more serious. There was a defensive build-up of the criminal justice system at every point. Police forces were greatly strengthened. Sentencing laws, already among the toughest in the world, were made even harsher. Parole was curtailed and, in some places, abolished. Prosecutors, judges and juries became more unyielding. The continuing strength of this backlash is demonstrated by the recent massive increases in prison and jail populations at the same time that the rate of reported serious crimes has begun to decline.[58]

Many experts agree that laws, sentencing practices and release policies have even greater impact on prison populations than do demographics or crime statistics. That makes prison and jail population management a matter of policy choices and political decisions. Allen Breed, the immediate past director of the National Institute of Corrections, testified to Congress that, "jail and prison populations must be seen as less the result of such quantifiable indicators as the baby boom and the crime rate than as the result of basic policy decisions reflecting beliefs about how we choose to deal with offenders. . . . Thus, solutions lie not with jailers and wardens, but with the key decision makers spread throughout the criminal justice system."[59]

A problem with causes so fundamental requires broad and far-reaching solutions. Too often, the responsibility for dealing with overcrowding is laid solely on the head of the corrections system — the commissioner of corrections or the county sheriff. Since they have little control over the number of prisoners in the system, their only solution generally is to propose expansion of facilities to house prisoners. But responsibility for the volume of prisoners rests with all segments of the criminal justice system, including legislators.

Chief Justice Warren Burger noted in a recent address: "Correctional policy, particularly during times of rapidly increasing prisoner populations and prison overcrowding, can no longer remain confined to one level of government or one segment of society."[60]

Unfortunately, the ability to devise far-reaching solutions and the authority to carry them out are hard to locate. The criminal justice "system" is hardly a system; it is a widely disparate conglomeration of often competing agencies and interests that rarely, if ever, act in concert. Often, a "solution" imposed at one level only exacerbates the situation at another. Population ceilings on state prisons, for example, have had the unfortunate effect of backing up convicted offenders in county jails. At the beginning of 1982, 8,217 sentenced inmates were languishing in local jails because there was no room for them in state prisons.[61]

TAKING A FRESH LOOK

One way to get public officials from all branches of government to pay attention to the overcrowding problem is to set up a "blue ribbon" commission, a special task force, or interagency committee. In recent years, such groups have proliferated at both the state and county levels.

A survey of 16 such statewide task forces showed that 11 focused solely on prison overcrowding, three on sentencing policy and two were given broad mandates to examine the whole issue of corrections.[62] Some made recommendations that were ignored; others charted a new course that the legislature and executive branch eagerly followed.

There are obvious advantages — and pitfalls — to this approach. Setting up a prison or jail overcrowding task force is a public admission that a serious problem exists, and that it is beyond the control of one agency or branch of government. It provides a forum for the collection, organization, consideration and dissemination of information that probably would not otherwise surface. And it creates, for the first time, an entity responsible for defining the problem and for finding answers.

On the other hand, everyone is all too familiar with the strategem of avoiding an issue by "referring it to committee." "One wonders whether prison commissions are just a way of buying time," Norval Morris of the University of Chicago Law School suggested at a 1983 conference.[63]

One student of the process of changing public policy observes that such groups often "begin with considerable fanfare, public interest and participant attention," then "deteriorate rapidly into poorly attended debate sessions . . . where conclusions are either elusive or dictated by one or two individuals with only token endorsement by the disaffected majority."[64]

Avoiding this fate, he said, requires attention to five factors "critical to effectiveness." They are:

- A clear mandate. There is a greater chance for success if a group's objectives are clear and manageable.
- Adequate staff support and involvement. Most policy groups or task forces are composed of busy administrators who need thorough, well-planned staff guidance on the issues.
- Strong leadership. The chair and staff director of the group must be able to produce results without stifling dissent.
- Strong membership. The group's members must be powerful and well-connected enough to have access to the highest decision makers — at the state level, for example, the governor, attorney general and legislative leaders.
- Carefully structured, participatory process. Boredom and frustration will result without it.[65]

A well-chosen task force — one composed of articulate, knowledgeable representatives of powerful interests — inevitably will face internal conflicts. A free exchange of ideas and opinions is useful to such groups. One management consultant who has studied the workings of prison overcrowding commissions urges them to "develop a logic that can encompass differences instead of the more dominant either/or framework."[66]

At the State Level, Public Policy Panels

The Center for Effective Public Policy, a non-profit organization based in Philadelphia, has assisted the work of on-going public policy panels on prison overcrowding in four states: South Carolina, Michigan, Colorado and Oregon. In each of these states, key legislators, judges, prosecutors, corrections officials and other interested parties form the panels. What sets these four commissions apart from many such groups is that the members assume the responsibility, not only for proposing solutions to the problem, but for implementing them as well. They pledge to go back to their colleagues and advocate their findings.

Gerald Kaufman, a former Pennsylvania state legislator and the director of the center, said each of these panels has begun its work by taking on three basic, difficult questions:

- Defining the problem — Are there too many inmates in state prisons and, if so, why?
- Setting prison population limits — What are the limits to growth and how are they enforced?
- Developing a philosophy of punishment — What do the decision makers and people of the state want from their criminal justice system?

Kaufman believes the groups work best when they recognize the essentially political nature of these questions. For that reason, it is important that panel members themselves, not their assistants or stand-ins, attend panel meetings. Otherwise, panel members will start to think of prison overcrowding as a technical, not political, problem. It is also necessary, he said, to be politically flexible, "to recognize the wheeling and dealing that's going to go on" among panelists with differing and seemingly conflicting needs.

So far, these policy panels have addressed only short-term goals. For example, the group in Michigan proposed and successfully moved through the 1983 session of the state legislature a law reinstating "good time" in Michigan prisons. The voters had abolished good time in a "get tough" 1978 state referendum; repealing that vote required a two-thirds majority in both houses of the legislature. Success had seemed far from likely at the outset. "It was an amazing victory," Kaufman said. "When it works, this is an exciting process."

At the County Level, Don't Panic

Don Murray, the director of the criminal justice program for the National Association of Counties, believes that the same approach is useful for officials faced with jail overcrowding. "My first bit of advice to them is, 'Don't panic,' " he said. "Then get every notable in the county involved in the process of looking for a solution. Too often, the fundamental problem is a lack of planning. When we talk about the criminal justice system, we talk about jails. But the jail should be the backstop of the system, not the backbone."

The American Justice Institute (AJI), a private planning agency based in Sacramento, California, recently studied how 58 counties across the U.S. deal with jail overcrowding. Their report echoes and amplifies Murray's advice. "As long as criminal justice agencies fail to develop a coordinated jail plan," the report says, "the amount of jail space will be determined more by chance or default than policy. Before any community can gain control of the size of its jail, it must create a formal, structured organization that will address the key question, 'In this community, what is the jail for?' "[67] Creating a group that can be held accountable for the problem of jail overcrowding is an essential step to finding a solution.

The AJI report suggests that county officials create a multi-agency "jail population management board" including the sheriff, local prosecutor, judges, probation officials, public defenders, municipal police chiefs, county commissioners, mental health officials and (optionally) representatives of the general public. Its suggestions for operating the board include:

- Don't make the sheriff the chairman. "Such an appointment would foster the false impression that the cause and cure of jail overcrowding are primarily the sheriff's responsibilities."
- The most successful of such boards have "judicial leadership, or strong judicial participation."
- Collecting and analyzing information about the jail population and the entire county criminal justice system is the most important part of a jail overcrowding study, and the board should hire a full-time project director and a research analyst, and either full- or part-time "data collectors" to undertake that study.
- Gathering this information and developing a plan for managing the jail population can take from six months to one year. The project will need a budget of at least $30,000 — or about half the construction cost of adding one more bed to a jail.[68]

What Good Planning Involves

Not all states or counties will set up broad-based commissions, and even if they do, there are many planning activities that do not rest on high-level policy choices. A consortium of representatives of criminal justice agencies, or even an in-house effort by the corrections agency, can perform many crucial activities that are essential to dealing with an overcrowding problem.

Many states and counties ignore this step and plunge ahead with premature building plans. They do so at their own peril. "A community might be tempted to get a 'quick fix' for its jail [prison] population, avoiding the planning effort and all discussions and decisions that go along with it. . . . Such an approach inevitably produces a jail (or prison) that is obsolete the day it opens. Rather than solve problems, they are perpetuated for another 50 years."[69]

David Voorhis, a former police chief who has trained officials in jail and prison planning from hundreds of counties for the National Institute of Corrections, has developed a checklist of what he calls "seven stumbling blocks to effective planning." They are:

- failure to perform early planning activities;
- failure to educate the public;
- failure to understand the nature of the criminal justice system;
- failure to gather data about critical planning issues;
- failure to make system-level policy decisions;
- failure to do adequate pre-architectural programming;
- failure to consider operational costs during planning.

Voorhis is not the only expert in the field of local corrections planning. Several large architectural firms and private consultants have substantial experience in this discipline, as do nonprofit groups such as the National Council on Crime and Delinquency (NCCD) and the American Justice Institute. States and counties can profit richly from such advice.

In Nevada, for example, before considering whether to build new prisons, the state legislature — at the urging of the department of corrections — commissioned the NCCD to study the state's current and future corrections needs. The NCCD's report found that Nevada had sufficient space for high-security inmates, despite current overcrowding in high-security prisons. What was needed, the consultants found, was a reclassification of the state prison population to reduce reliance on maximum-security confinement and more minimum security space. The report suggested the formation of a statewide task force to address the causes of prison and jail overcrowding; it recommended that, given "Nevada's likely future budget constraints, state officials should explore penal code revisions, parole guidelines, a sentencing commission, and the more extensive use of non-prison sanctions to manage its offender populations."

One of the most important planning resources available is the National Institute of Corrections. This agency of the U.S. Department of Justice provides free technical assistance to states and counties.

One of NIC's major efforts in this area is the Planning of New Institutions (PONI) Program. It was designed to help communities plan for new jails, although the program has been adapted for state prison needs as well. The PONI Program offers three phases of assistance. The first is a one-or two-day "community meeting" that involves community leaders and interested members of the public in an intensive, structured discussion of the purposes, problems and potential of an institution. NIC provides trainers to lead the meeting. The second phase, open only to counties that have held the community meeting, is a week-long training seminar held at Boulder, Colorado for teams of five to eight officials. This covers such topics as gathering jail inmate data, formulating goals, predicting populations, designing facilities and managing projects. The third phase consists of technical assistance provided by experienced consultants.

Get Fresh Data

States and counties rely on their corrections departments to provide information on matters such as the number of inmates currently in detention, what charges they are being held on, and how long they are expected to remain in confinement. But relying on such reports for making future decisions is generally a mistake. They do not provide the level of detail needed to plan properly. While such routine information may be sufficient for day-to-day operations of existing facilities, building out-of-date assumptions into new institutions generally results in extra expense. It means that institutions will be built that are larger and more secure than necessary.

States and counties should first create a profile of the prisoner population (often done by an outside consultant) that contains information about prisoner lengths of stay, needs of inmates, their security requirements and criminal histories. It should also identify the costs of incarceration at various staffing levels and pinpoint potential bottlenecks in the criminal justice system, exploring ways to reduce the inmate population through administrative reform. Even the most experienced corrections professional can be surprised by the findings of such studies.

Be Careful With Population Projections

Trying to project what the needs of a penal facility will be in five, ten and 20 years is an essential but tricky step. Projections should be based on thorough research into long-term and recent crime trends, policies that affect imprisonment, local employment expectations, and projections of key local population groups such as young males.

Nationally, there will be little relief in the short term from demographic pressures on corrections, even though crime rates will probably decline. While the peak ages for criminal activity are the teenage years, the peak ages for imprisonment are the mid-twenties, because first offenders often are not sent to prison. "The post-war baby boom will be moving into the high-imprisonment ages, their 20s and 30s," Alfred Blumstein, an expert in the demographics of criminal justice said recently. "Thus, we can anticipate prison populations to grow until at least 1990."[70] Dividing the young male population into sub-groups, one can see that even more trouble lies ahead: "In 1976, 24.1 percent of American males were below the age of fourteen. Among the population officially classified as poor, on the other hand, 39.7 percent were under fourteen years of age; and among poor black males, no fewer than 40.3 percent were in that age group."[71]

Even with the best information, population projections should not be regarded as inspired prophecies. The science of predicting the future is not exact, despite progress in computers and social science. For instance, the California Department of Corrections' research section enjoyed wide respect for many years. (Recent reorganization of the department has reduced its research capabilities significantly.) In 1978, the department projected that the state's prison population in June 1983 would be 24,000.[72] The actual figure in June 1983 was 35,000, an error of 46 percent. Perhaps over-reacting to that experience, the department's 1983 projection for 1988 ranged from 52,000 to 57,000 state inmates.[73]

Planners do not always underestimate in their projections; other states have been just as far off in the other direction. The point is that one cannot project short-term trends *ad infinitum*. "If we continue to grow at the rate we have for the last 20 months, in 20 years the entire population of the state will be incarcerated," the Delaware Commissioner of Corrections noted in 1983.[74]

Population projections are only as solid as the policies on which they are based. They are useful only as a warning of what will happen *if nothing changes*, or of what will happen if a particular change — say an increase in mandatory sentences — is adopted. Officials who are disturbed by the fiscal or social implications of population projections must take a hard look at the policies that lead to this result, before they begin building facilities to accommodate the "inevitable" population increases.

Who Are Your Inmates?

In recent years, many states and counties have revamped their classification procedures to help them plan current and future needs. Classification attempts to determine whether an inmate is likely to escape or to cause harm to staff and inmates, and to determine his special needs.

American prisons are traditionally "over-classified" — that is, they keep inmates in high-security prisons who need not be there, at great cost to the taxpayers. As mentioned earlier, half of all American prisoners are in maximum security, while only ten to 15 percent warrant that level of custody.

Recent classification strategies attempt to use objective criteria (prison record, violent offenses, escape history) instead of subjective or traditional practices. Reclassification often points the way to alternative strategies or less expensive building options. In Alabama, a federal court ordered the state in 1976 to reclassify its population. The new techniques found that only three percent of the inmates needed maximum security, whereas 34 percent were confined there. Only ten percent were assigned to minimum-security or community programs, whereas the new system found that 50 percent could be assigned there without endangering the public. Alabama subsequently built a number of minimum-security facilities and has 20 percent of its inmates on work-release, the largest percentage in the nation.

Similarly, the 1982 NCCD study of the Nevada prison system compared Nevada's classification system to three different, widely respected models (those used by California, the U.S. Bureau of Prisons, and the National Institute of Corrections). These all showed that Nevada was over-classifying, and paying heavily for it. While Nevada officials classified only 13 percent for minimum security, the other procedures would have produced higher percentages: 53 percent using the California model, 56 percent using the Bureau of Prisons model and 57 percent using the NIC model. Minimum-security facilities are not only much cheaper to build and operate, but a minimum-security classification often gives administrators flexibility in moving inmates out of prison into work-release or prerelease facilities.

For jails, classification techniques are not so advanced, but they are equally important. An efficient jail classification system separates first offenders from more experienced ones, identifies mentally ill, suicidal and homosexual inmates, and screens for medical needs. A jail classification system can identify the number of beds needed for juveniles, drunks or the mentally ill — people that most sheriffs believe should not even be in jail.

Setting Limits on Inmate Populations

Setting a practical limit on the number of inmates a jail or prison can hold is an essential first step in eliminating overcrowding. It is also more acceptable to most public officials than an increasingly common alternative — having a federal court order set jail and prison capacities. But determining where to draw the line is not easy.

There is a national, professionally endorsed standard for limiting prison and jail populations, but its applicability is difficult. The Commission on Accreditation for Corrections requires a minimum of 60 square feet of living space per inmate. But currently, about 40 percent of the state prisoners in the U.S. are housed in institutions that fail to meet that standard.[75]

The courts provide some guidance, but no hard and fast rules. As one recent study notes, despite the constantly growing body of federal case law on the subject, there is no consensus on how to define overcrowding. The courts have considered everything from population density in an institution to the availability of recreation and medical care to the overall condition of the facility in determining whether overcrowding exists. In its 1981 decision in *Rhodes v. Chapman*, The U.S. Supreme Court ruled that double-bunking prisoners in a cell is not necessarily unconstitutional, but must be viewed in light of the totality of conditions at the prison.

There is bound to be some compromise in public officials' efforts to establish institutional capacities. The prison overcrowding panel in South Carolina, for example, wound up setting an "operating capacity" for the prison system that is 120 percent of its "design capacity." It was a compromise between conservatives and liberals on the panel, and it permits double-celling in some of the state's newer prisons while prohibiting it in others. Officials in other states have drawn the line at 100 percent of design capacity, or lower. The definitions of an institution's capacity can differ. But the process of reaching that definition is a fundamental political responsibility.

COMPREHENSIVE APPROACHES

Sentencing practices are critical factors in prison and jail overcrowding. Sentencing judges are, in the words of one corrections reformer, "the fulcrum of responsibility in jails."[76] Their role in determining prison populations is just as important. Yet few states have anything approaching rational, coherent sentencing policies. One recent study of the prison overcrowding crisis argues that the need for such policies "remains indisputable. Without a statewide policy to guide the use of incarceration (or any other sanction), rational corrections planning is an impossible ideal."[77]

Individual judges sometimes take prison or jail conditions into account when passing sentences; an overcrowding crisis may inspire them to rely more heavily on sentencing alternatives to incarceration. But such individual efforts are not enough. States need a systematic sentencing policy that considers prison and jail capacities.

Sentencing Guidelines

For years, legal reformers have decried the sentencing disparities that exist from one county to the next, or one court to the next. Sentencing guidelines were enacted to end that problem. Seven states have put such guidelines into effect while another half dozen legislatures or special sentencing commissions are considering guidelines.[78]

All of the states that adopted such guidelines have developed a sentencing grid that presents judges with recommended sentences for various crimes. In Minnesota, however, a sentencing guidelines commission went one step further by devising guidelines that also took into account the state's prison capacity. That was in 1980. Washington adopted similar guidelines in 1983. Sentencing commissions in Florida and South Carolina will probably also consider capacity in their recommendations.

The Minnesota sentencing guidelines have been widely studied, and are believed to have helped keep the prison population in that state within its capacity. Their operation has not been without problems, and those problems can also be illustrative to other states.

After two years of stability, prison admissions in Minnesota began to grow in 1982 in ways the sentencing commission had not foreseen. The guidelines are based on a matrix that scores the severity of the current offense against an offender's prior criminal history. One recent study notes that, "In order to circumvent the score that the guidelines produce for certain offenders, prosecutors are apparently filing separate charges on the same criminal event, in order to accumulate more points for prior criminal history." In other words, they are piling up points against offenders so that the sentences given for later convictions will be more severe. "The result has been the incarceration of higher proportions of lesser offenders than the guidelines had envisioned."[79] The guidelines commission, which is responsible for monitoring the results of the rules it established, now must decide how it will adjust the guidelines to keep the prison system from overflowing with inmates.

County officials have criticized the Minnesota guidelines for concentrating solely on prison sentences and felons, thereby ignoring the situation in the state's county jails. Many Minnesota felons diverted from prison by the guidelines have ended up with jail terms, worsening jail overcrowding in that state, one study found.[80]

The sentencing guidelines drafted in Washington were designed to keep jail capacity in mind as well. They encourage judges to use alternatives to jail for lesser offenders.[81] With that experience in mind, the Advisory Commission on Intergovernmental Relations, a study group Congress established to examine issues of federalism in our government, recommends that "all states adopt sentencing guidelines that apply to both felony and serious misdemeanor offenders and provide alternatives to incarceration for nonviolent offenders. Such guidelines should be based on legislatively predetermined population maximums at both the state and local levels."[82]

Comprehensive Community Corrections

Several states have implemented plans that try to encourage county governments to keep lesser offenders at home rather than send them to state prison. Minnesota pioneered this approach with its Community Corrections Act in 1973. The law encourages counties to develop a range of alternatives to imprisonment; the state subsidizes these alternatives. The act is credited with keeping Minnesota's incarceration rate one of the nation's lowest. Oregon, Kansas, Ohio, Indiana, Virginia and Missouri have adopted similar laws.

Each county in these states has the freedom to come to its own decisions about which prisoners it will turn over to the state, which it will keep in the local jail and which it will put into alternative programs. Most programs provide financial incentives for counties to keep felons at the local level. The Minnesota and Kansas laws provide money for alternative programs only to governmental entities with a minimum aggregate population. That encourages sparsely populated rural counties to establish jointly administered programs that, individually, they would not be able to afford.[83]

Regional Corrections Systems

Many counties are too small to support a range of alternative programs or even a decent jail. In 1978, four percent of the nation's jail inmates were scattered among 44 percent of the jails, which had an average daily population of fewer than ten.[84]

One way to improve services is for counties to band together. Groups like the National Association of Counties have recently endorsed this approach.[85]

There are relatively few regional jails; a 1979 survey found only ten.[86] One straddles the state line to serve the community of Texarkana, Texas and Arkansas.

Ideally, regional systems should share more than just a jail building; they can offer a whole range of services. One of the first regional systems covers three counties in Minnesota: Dodge and Fillmore counties are rural, while Olmstead centers around Rochester, an urban area. The key to the system is a 22-member advisory board, with representatives from the three counties. The system serves both adults and juveniles. In addition to a multi-county jail, the Dodge-Filmore-Olmstead group offers the PORT program of residential centers, group homes, an adolescent shelter, a rape hotline, a victim compensation program, a social worker to coordinate community service, and a volunteer program.[87]

There are obstacles to such cooperation. Counties may squabble over where a jail should be located; sheriffs object to transporting prisoners to other cities; officials disagree on dividing costs; and the sheriff loses some of his power in such an arrangement. "One is left to conclude that the most advanced technological society in the world — a society that was able to send a man to the moon — is incapable of figuring out how to divide costs equitably or to send an inmate from one county to another," writes Don Murray of the National Association of Counties. "Yet surely, if the problems are political so must be the solutions."[88]

SPECIFIC STRATEGIES FOR REDUCING JAIL POPULATIONS

Reducing Bookings

- Diversion for alcoholics — To keep the jail from being an expensive drunk tank, communities must do more than merely decriminalize public drunkenness, which most states have already done. The community must provide detoxification centers, and these must be designed to meet the needs of police and health officials as well as alcoholics. After San Diego revitalized its detoxification program by making booking a simple two-minute procedure and allowing health personnel to exclude violent inebriates, referrals jumped from 3,000 to 24,000 a year. Treatment costs only $6 per visit. A study of two cities in Kentucky showed that Lexington had a jail population two and a half times larger than Louisville's because Louisville used a diversion program for alcoholics, while Lexington did not.[89]
- Taking care of the mentally ill — Community mental health centers can provide support to keep people from getting into trouble in the first place, and can be a refuge for those picked up on nuisance charges or for minor crimes. Many of these are people who have been released from mental hospitals but not given outpatient treatment. In Galveston, Texas, specially trained deputies identify mental health arrestees and divert them to special facilities.[90] In Montgomery County, Pennsylvania, law enforcement agencies agreed to send mentally ill defendants to a private nonprofit hospital. The cost per referral is $700, but private insurance, Blue Cross or Medicaid covers 97 percent of these charges.[91]
- Keeping juveniles out of jail — Juveniles end up in jail not because authorities think they belong there, but because there is nowhere else to put them. Even for communities without separate juvenile institutions, there are many options. New Bedford, Massachusetts, uses a program that pays women to take care of individual youths on a 24-hour basis.[92] Other communities have 24-hour hotlines that help judges and police find alternative place-

ments. Police can find a bed for runaway or troubled youths in hospitals, nursing homes or mental health facilities. Foster families can be trained to take in juveniles on short notice. Using a network of these and other resources, Pennsylvania has kept all juveniles out of adult facilities since 1980.[93]

- Citation release — For those charged with misdemeanors, there is often no need to book into jail at all; a police officer can issue a summons or citation. The pioneer project in this area, the Manhattan Summons Project, established by the Vera Institute of Justice, saved $6.7 million in police time in its first four years and had a low failure-to-appear rate of five percent.

Getting Inmates Out of Jail Quickly

- Release-on-recognizance — Known as ROR, this system, also initiated by the Vera Institute, uses a point scale that counts ties to the community (job, family, length of residence) to determine which defendants are most likely to show up for trial; they can be released on their own without posting cash bond. Across the country, 135 formal programs do such screening;[95] in smaller jurisdictions, probation officers often handle it. ROR programs can be strengthened by providing 24-hour staffing and by making provisions for night or weekend releases.
- Percentage bail — Under this option, a defendant can post ten percent of the amount of bail with the court, rather than with a bail bondsman. If he shows up for trial, he gets most or all of his money back, unlike the fee he pays a bail bondsman. If he does not show up, he owes the other 90 percent, plus he is charged with a separate offense for bail-jumping. Philadelphia estimated that it saved $1 million in a year and reduced its jail population 29 percent by using this system.[96]
- Conditional release — For those who cannot be released on their own recognizance, but do not present a major threat to the community, judges can impose special conditions, such as requiring that the defendant attend a drug-treatment program or call the probation office every day.
- Speeding up the courts — By introducing measures to reduce court delays, Providence, Rhode Island was able to reduce the median time a case was in court from 277 days to 61 days. These measures included bringing in extra judges to clear up a backlog, enforcing strict time limits, and introducing new management practices.[97] The range of time it takes to handle criminal charges ranges from 33 days in Detroit to 328 days in the Bronx, New York.
- Warrants and detainers — Many jurisdictions automatically keep people in jail even on petty charges if they have a warrant lodged against them. Investigating these warrants and discriminating between types of warrants can speed releases from jails.
- Programs for sentenced inmates — Alternative programs such as restitution, community service, intensive probation, work-release and halfway houses can be run on a county level. These programs keep convicted petty offenders from taking up jail space for months on minor charges.

SPECIFIC STRATEGIES FOR REDUCING PRISON POPULATIONS

Alternatives — Punishments That Bypass Prison

- Intensive probation — Special probation projects screen offenders who have been sentenced to prison and return them to the community under terms that protect the public and punish the culprit. Georgia's Intensive Probation Supervision program is "the strictest form of probation for adults in the United States."[99] Clients see their probation officers five times a week; they have evening curfews, perform community service and pay fines and restitution. A probation officer and a "surveillance officer" together monitor no more than 25 probationers.

Texas, New York, Washington, New Jersey and Alabama have similar, if less stringent, programs. In Texas, the program was designed largely as an alternative for probation violators, who make up 43 percent of the admissions to the overcrowded Texas prison system. While these programs are more expensive than regular probation ($4.75 per day per offender in Georgia, versus 75 cents for regular probation), they are much cheaper than imprisonment ($24.61 per day as reported by the Georgia Department of Offender Rehabilitation). Most of the funds in Georgia come from a fee assessed against probationers. Georgia reports saving $5.4 million a year; Texas says it has eliminated the need for one 2,000-person prison and $8.3 million in operating costs.[100]

- Regular probation — States and counties have often let probation caseloads rise to the point where the term "supervision" becomes meaningless. "California's diminished resources reduced the operational budgets of 52 county probation departments by 32 percent," the former director of the National Institute of Corrections said. "Caseloads in Los Angeles County soared to over 300 offenders per officer, which provides little in the way of supervision and nothing in terms of public safety."[101] This is a short-sighted form of saving, since imprisonment costs 10 to 14 times as much as probation[102] and judges are more likely to send marginal offenders to prison if probation can offer no services or control.

- Restitution and community service — Making offenders work so they can repay society or their victims — has proven politically palatable and cost-effective. Some states, such as Mississippi and Georgia, have a network of minimum-security centers that help offenders find jobs, provide residential security at night, and keep track of restitution payments, taxes and family support. The state can recover the cost of room and board from offenders' earnings. In Indiana, a private agency, Prisoners and Community Together, operates a program that brings offenders and victims together to negotiate a repayment schedule, upon referral from the courts.

- Tailor-made probation plans — The National Center on Institutions and Alternatives, a non-profit group based in the Washington, D.C. area, offers what it calls "client-specific plans." These depend on an in-depth assessment of an offender's problems to pinpoint significant but useful punishments. Often they are as punitive as prison — requiring thousands of hours of community service in an area related to the crime, as well as curfews and counseling, for instance. In its first two years of operation, NCIA had 75 percent of its proposals accepted by judges.[103] Connecticut is considering appropriating $500,000 to establish a similar program in the public defender's office; this could save 180 prison beds annually.[104]

- Community programs — Work-release centers, drug and alcohol treatment centers, and study-release centers are all options. Often states contract with private agencies, such as the Salvation Army, rather than operating them directly. In South Carolina, the Alston Wilkes Society, a non-profit group with religious roots, runs two halfway houses and counsels inmates and ex-inmates.[105]

Safety Valves: Ways to Reduce Time Served

- Emergency release mechanisms — In states with firm population ceilings, there must be procedures for releasing inmates when prisons exceed capacity. Arizona, Connecticut, Florida, Iowa, Michigan, New Jersey, Ohio, South Carolina and Washington have established such mechanisms, and many other states are considering them. Michigan's procedure is the best known.

There, whenever there are too many prisoners for more than 30 days, inmates get 90 days lopped off their minimum sentences. The parole board then examines the newly eligible inmates and releases those it thinks will pose little danger to the community. The act has been put into effect five times between 1981, when it was enacted, and early 1983. Other states have procedures that automatically release the least serious offenders until the system returns to its capacity.

These procedures have been credited with keeping prison conditions from reaching the boiling point in several states, but there is a limit to their effectiveness: Each time they are invoked, there are fewer and fewer minor offenders suitable for release.[106]

- Good Time — Raising the amount of credit for good behavior or work in the prison system can mitigate the effects of long sentences. In California, "incentive good time" raised the amount of time earned from a maximum of one-third a sentence to one-half, if inmates participated in work or study programs. In South Carolina, extra good time for work is credited with having saved $8.2 million in operating costs and 614 beds, in the period from 1979 to 1981.[107]

- Work programs — Work-release and work-furlough programs help offenders make the transition from prison to freedom; they also clear out bed space in prisons by moving participants to community placements. South Carolina has nine centers with 1,000 inmates; they become eligible nine months before their parole date. Delaware's "Phased Reentry Program" offers offenders convicted of minor crimes the chance to live in the community, but they must return to the prison every 72 hours for interviews and a blood or urine test; they are also subject to curfews. In two years, 1,090 were released, and only 70 new crimes were committed by that group, none serious.[108]

While most states have prerelease programs, they are seriously underfunded. In a 1977 survey, 31 states reported that they had waiting lists of eligible inmates for whom there was no room in prerelease programs; only 14 reported that they were prepared to handle more inmates.[109]

- Parole — States have traditionally tinkered with parole to control prison populations. They can speed up parole hearings by providing extra staff to insure that inmates will be released as soon as they are eligible. Some states have eased parole eligibility rules or have become less likely to revoke parole for technical violations. Wisconsin's Special Action Release (SAR) program paroles selected nonviolent inmates early and provides special parole services. An evaluation showed that SAR clients were less likely to commit serious crimes than a matched sample released on regular parole.[110]

Are These Programs Safe?

Many people fear that community-based corrections programs increase the danger of crime in the towns or neighborhoods in which they are located. This fear appears to be unfounded if the programs are managed well. A recent review of research on the subject concluded that, "In-program crime rates for community programs are small, generally averaging one percent to eight percent. Most of these are petty crimes; the rate of violent crimes committed by program participants range from infinitesimal to one percent. . . . Well-run community programs do not increase the danger to residents of the immediate neighborhood."[111]

Widening the Net

A caveat: These programs must have strict guidelines and frequent oversight to make sure they are being used for their intended groups. If they begin taking high-risk clients, a single crime committed by one resident can abolish years of successful programming. More frequently, such programs are watered down and filled by offenders who would not have gone to prison or jail at all. This makes punishment tougher for them, but does nothing to reduce the demand for prison space. Known as "widening the net of social control," it results in extra costs to the public without decreasing the need for corrections construction.

INDIANA:

Making a 'Fundamental Departure'

In 1977, Indiana became the third state in the nation to adopt determinate sentencing, ending much of the discretion exercised by judges and the parole board. The new penal code had especially tough provisions. A mandatory 30-year "habitual offender" term was added to convictions for a third felony, for example, and probation was forbidden for a second felony conviction. The legislature adopted the law with no clear idea of how it would affect prison populations. The best projection that could be made, one study at the time concluded, was that the law would produce either a 45 percent decrease in the population, or a 30 percent increase.[112]

At least in part because of determinate sentencing, Indiana's prison population began to soar. In 1981, the number of state inmates grew by 20.5 percent, from 6,683 to 8,054. By the end of 1983, it was hovering just under 10,000. As the prison population grew, prison conditions worsened. During 1981, inmates rioted at one of the state's two major prisons, and inmates staged a five-day nonviolent work stoppage at the other. By mid-1982, both prisons were under federal court orders decreeing sharp reductions in the inmate population and improvements in prison services.

The state undeniably faced a major prison overcrowding crisis. Before it adjourned in 1982, the Indiana General Assembly established an interim committee to draft solutions. As chairman of the committee, it named State Senator Leslie Duvall, the respected Republican chairman of the Senate Judiciary Committee and one of the framers of the determinate sentencing law.

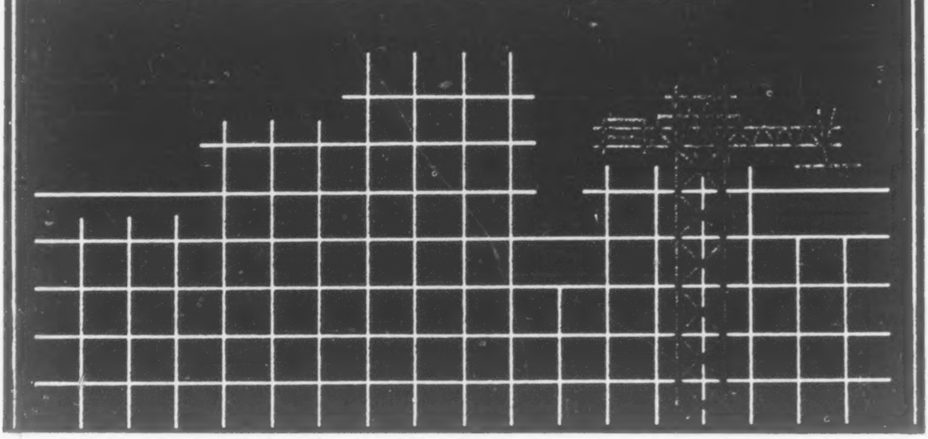
The same crisis also gave new urgency to efforts to expand community corrections in Indiana. A state community corrections act was passed in 1980, and pilot projects in restitution and community service sentencing were established in three of the state's 92 counties. The Association of Indiana Counties formed a blue-ribbon "task force" on community corrections that included as members a former state attorney general and the former dean of the Taylor University Law School. They presented their case to Duvall's committee and to civic clubs, church groups and newspapers around the state. Charles Colson, the former Nixon White House aide turned evangelistic prison reformer, also made several well-publicized stops in Indiana to advocate community corrections.

Their efforts persuaded Duvall to support strengthening community corrections, and he in turn became a leader for community corrections in the 1983 session of the Assembly. The result was a dramatic eleven-fold increase in state appropriations for community corrections, from $250,000 for the previous budget period to $2.8 million for the period ending in 1985.

This legislation has not transformed corrections philosophy in Indiana. People have not re-examined sentencing policy and probably won't in the near future. Nevertheless, Duvall said, the increased commitment to community corrections "represents a fundamental departure. It means the state of Indiana does not intend to solve its problems through additional bricks and mortar. . . . A lot of us feel that rehabilitation is better addressed through work release than by simply warehousing more (prisoners) in maximum-security units."

CHAPTER FOUR:

BUILDING FOR THE FUTURE



One of the paradoxes of debates over prison construction is that the people who decry miserable conditions the loudest are often the ones most opposed to building something better.

These positions are not really inconsistent. Many reformers have abandoned hope that prisons can be improved. Their stance is summed up by William Nagel, director of the American Foundation and a former prison warden: "As long as we continue to build prisons, we will have neither the will nor the pressure to seek more workable solutions."[113] Nagel has been a leader in calling for a moratorium on prison construction until better ways of dealing with the vast majority of offenders are developed.

Judging from the amount of prison-building going on, this argument has not been very persuasive among legislators and commissioners. Court orders make some construction inevitable, and the political climate makes it clear that much more will occur, even if it is ill-advised.

At this point, many reformers throw up their hands and walk away. There is little or no debate over what *type* of institution to build. "Innovative architecture will do little to disguise the caging of human beings," a moratorium newsletter declares. "It can't make much difference to the prisoners what shape their jails come in."[114]

But most people who live and work in prisons think it can. Any place designed to keep people under lock and key will be repressive, but designers can minimize the rapes, stabbings, riots, vandalism and suicides that have made American institutions such disgraces. One never hears a warden speak of "a good prison," but there are better prisons and worse prisons; there are jails that fulfill their functions and jails that do not.

Unfortunately, the lack of debate over types of institutions has left a vacuum. Officials whose primary concerns are time and money take the initiative. They rely on traditional designs that dehumanize both inmates and staff and produce institutions that are obsolete the day they open.

But repeating the mistakes of the past does no honor to tradition. Across the country, there are scores of unfortunate examples of poor planning, but there are also a few places that attempt to minimize the damage they do.

Better Ideas

Over the last decade, architects and behavioral scientists have studied prison environments, and in some places they have been allowed to combine architecture, philosophy and management to produce institutions on a more human scale. Most of the better new institutions share several principles:

- "Normalized" living conditions: They avoid bars, grey walls and long corridors that send a message of dehumanization to inmates and staff. They minimize noise and allow freedom of movement. Inmates have some choice about what to do and how to live.
- National standards: These have been promulgated by the American Correctional Association, the U.S. Department of Justice, the American Bar Association and the American Medical Association. They call for single

rooms, exterior light, adequate medical facilities, and fire-safety and sanitation measures. The standards do not represent a "dreamboat" institution, but a minimum level of human decency. They have been evolving for years, and will probably become more stringent in future decades.

- Size: The days of the mega-institution are over. Most authorities agree that 400 to 600 inmates is the absolute maximum that any facility should hold. States sometimes prefer to build one large institution rather than a series of small ones to minimize political protests, but building a larger institution only returns power to the inmates. In the long run, it does not appear to achieve significant cost savings. "Comparative cost-effectiveness data, while sparse and difficult to find, suggests that larger institutions have lower construction costs. Small institutions have lower long-term operating costs," one corrections commission has written.[115]

Even within a small institution, housing and other services function more efficiently when broken down into small groups of 40 to 60 inmates.

- Location: New facilities should be placed near the communities from which inmates are drawn. Families can therefore readily visit. Location near urban areas also makes it easier to recruit minority staff members, a lack of which has been a source of unrest in many prisons.[116]

- Program: Inmates must have something to *do*. To merely build human warehouses is to build trouble. This means providing space and staff for educational and vocational programs and, especially, for work. Several states have shown that it is possible to provide inmates with satisfying work that teaches them skills and pays them a real wage. In Minnesota and Kansas, private industries have set up shop next to, and even inside, prisons. They hire inmates at minimum wage or better to do real work — data processing, metal-working, assembly-line work. Since 1975, a federally funded project, Free Venture Prison Industries, has been helping other states upgrade their prison industries toward free-world standards.[117]

- Staff: This is the most important consideration of all. New institutions must be designed to recruit and support a professional staff. One of the most influential books about prisons of the last decade is *The New Red Barn* by William Nagel. A survey of architecture and practices, it gets its title from a remark by Austin MacCormick, a reformer from the previous generation: "If only I had the right staff, I could run a good prison in an old red barn."[118] It does not make sense to build a "new red barn" if it cannot attract and hold a decent staff.

The design of the institution should encourage frequent, informal contact between inmates and staff so that staff members can maintain control without confrontation. Technological innovations such as closed-circuit television cameras and glassed-in control booths have actually increased the level of danger in many institutions by reducing the day-to-day contact between inmates and guards. These innovations "hinder effective supervision, which can come only through interaction of staff and inmates . . . Most problems must be neutralized before they get out-of-hand as staff, performing proactively and not retroactively, mix and talk with inmates, feel the pulse of the institution, and intervene in potential problems before they get serious."[119]

"Amenities" such as carpeting, television, noise reduction and pleasant colors benefit the staff more than the inmates. Reducing inmate stress will reduce staff stress and greatly reduce problems.

Corrections officers should have training and career opportunities. "Staff training and attitudes are more important to the success of a jail than the architect's design or the thickness of the walls," the NIC advises.[120]

- Management: Management practices must adapt to the new environment rather than trying to enforce the order of the traditional system. Institutions that try to patrol modular prison units as if they were cellblocks often are plagued by escapes, vandalism and violence, leading officials to blame the new designs. They then resort to locking inmates into their rooms for long periods, negating the principles on which the design was based.

An institution built along these lines would not be cheap, but it need not cost more than construction of a "traditional" cellblock prison. In the long run it would be far cheaper, for its operating and maintenance costs would be less, and it would not be obsolete within a decade.

Shop Around for Ideas

The responsibility for determining the nature and character of an institution rests with policy makers. Planners and leaders can learn about many different approaches by visiting new facilities. (The National Institute of Corrections sometimes supports these trips.) Some of the promising designs include:

"New Generation" jails:

This title, currently in vogue among corrections officials, implies that these are "state-of-the-art" institutions. They will, of course, soon be supplanted by even newer designs, but compared to what has been built elsewhere, they are encouraging. They are modeled on the federal jails in New York, Chicago and San Diego that were built in the mid-1970s. Those designs were regarded as impractical for county inmates until the Contra Costa (California) County Jail opened in 1981. It has been such a success that New York City modeled its rebuilt "Tombs" jail on it. Miami, Seattle and Portland are following suit.

"New Generation" jails do not depend on a single revolutionary concept, but on a combination of common-sense approaches to governing human behavior. They keep inmates in small groups, under the constant supervision of a correctional officer, who provides a role model. Inmates have freedom of movement within their living area and have access to recreation and education activities. Furnishings and decoration are attractive, and the inmates take care of them. Noise is minimized. These jails offer inmates plenty of telephones, televisions, laundry facilities and showers — the shortage of which often precipitates fights in traditional jails. Inmates who do not conform to the rules are immediately put in more restrictive housing; few do so.

In practice, these jails have been remarkably free of escapes, violence and vandalism. Guards begin to enjoy their jobs. And, despite their appearance, "New Generation" jails do not cost more to build than conventional jails.[121] They do not require more staff than a cellblock jail. What they do require is a commitment to train and support staff, and to run the jail, not as a battle zone, but as a cooperative venture for all concerned.

Modern long-term prisons:
States have been slower in developing similar "normalized" institutions for long-term state inmates. Some states have tried to incorporate some of the concepts, such as using clusters of rooms and glass instead of bars, but these innovations have often been negated by overcrowding, understaffing and poor management.

The U.S. Bureau of Prisons, which pioneered the "New Generation" jail concept, is now building all new institutions as campus-like facilities with freedom of movement, absence of guard towers (which are very expensive to staff) and an open atmosphere. They are all organized around small unit-management teams, which give the staff greater responsibility. One of the best-known examples is at Butner, North Carolina. Opened in 1976 as a treatment facility for prisoners, it now houses a mix of inmates that would be a recipe for a riot in most states: seriously disturbed juveniles, mentally ill adults, and a general population chosen for their histories of recidivism and violence. Although these are some of the toughest inmates in the federal prison system, Butner is able to use a relatively high percentage of women as guards (15 percent in 1981) who perform exactly the same jobs as men. Butner offers a rich mix of programs, including vocational and academic courses that are open to citizens from the free community. It has been remarkably free of violence, escapes or conflict.[122]

The state of Ohio last year scrapped $2.3 million in architectural plans for Spartan, long-corridor traditional prisons and replaced them with plans for decentralized mini-prisons modeled after "New Generation" jails. The new architectural work cost money, but state officials say that will be more than offset by lower building and operational expenses.

Prototypes and Other Shortcuts

There are no magical expressways through the thicket of planning. The Attorney General's Task Force on Violent Crime was unrealistic when it called on the National Institute of Corrections to "develop models for maximum, medium and minimum-security facilities of 750 and 500 (or fewer) beds from which states would choose the appropriate model(s) for construction."[123] Experts say that differences in philosophies, laws, inmate types, locations, soil types and building codes make the prototype ideal illusory.

Some major construction projects engage in "fast-tracking"—beginning construction on the basic structure while designers are still working out details. This method of construction can save time if all goes well, as apparently happened in Contra Costa County, but it can cost a fortune if it does not, as is reported to have occurred at the Tombs. The savings in time are usually offset by higher construction expenses because of change orders.[124]

Selling It to the Public

Officials often shy away from innovations because they are afraid of public backlash against a hotel atmosphere. Items like color television sets raise red flags, even though they are the cheapest way of keeping inmates occupied during leisure time. Florida built a new institution with air conditioning that was shut off because of public criticism; the building was hermetically sealed and there was no other means of ventilation or cooling.[125]

Proper planning can minimize these problems. One place to start is with existing staff. If they can be convinced that innovations, such as carpeting to reduce noise, are in their best interest, they will be less likely to speak negatively to the press. Union leaders will more likely support innovations if they have taken part in the planning. So will the public, if a broad range of community groups has been represented.

The media are important, too. "The media can be a tremendous source of support — or (they) can absolutely kill you," an NIC training manual advises.[126] The NIC suggests appointing press representatives to the advisory committee for the new institution, and designating a high-level official to serve as press spokesperson.[127] Open houses before opening — sometimes with reporters and politicians staying overnight to see how "luxurious" the facility really is—are often an effective technique to gain media and political support.

Don't Get Carried Away

When asked to identify the most common mistake associated with construction issues, several consultants contacted for this report used the same word: "overbuilding." This means building more space than is needed, building the wrong kind of space (maximum-security institutions instead of minimum-security), or adding layer upon layer of expensive security gadgetry.

Some observers would apply the term "overbuilt" to one of America's "showcase" prisons: the Minnesota Correctional Facility at Oak Park Heights. It began as "a model of what textbooks prescribe for policy planning," according to Kenneth Schoen, commissioner of corrections at the time it was designed.[128] Three task forces, which included some of the leading reformers in the nation, produced the plans for this facility. Intended as a small institution, it was designed for the most troublesome inmates in the system. Rather than oppressing them, "the aim from the onset was to build a facility that, through its design and programs, would minimize any lasting physical and emotional harm to its inmates."[129] The original design had all the hallmarks of innovative design mentioned earlier, and a number of its own as well: It was built into a hillside for energy efficiency and landscaping, yet let in plenty of light. A "town square" offered services such as a barber, a canteen, a restaurant and a library. Hallways were designed so staff and visitors could move about relatively freely.

Opened in 1982, it was immediately hailed as the "state of the art" maximum-security prison. But Schoen now terms it "a major disappointment." Later in the design process, he said, more and more security features were added—bars on windows, sophisticated electronic monitoring devices, and bulletproof glass around guards' stations. "What was lost was an important opportunity for inmates and staff to mingle as human beings," he said.

Many Minnesotans question whether the facility was needed in the first place. Minnesota has very few inmates who require the high degree of security Oak Park Heights offers. The state's sentencing guidelines and community corrections approach have kept the prison population under control, and when the prison opened there was no need for more bedspace.

Prepare for Failure

No matter how thorough the planning, no matter how thoughtful the design, no matter how expensive the construction, any new prison will be obsolete within a decade or two. Failure is the cornerstone of every prison, since prisons have failed to meet any of their goals except the most basic one of temporarily separating some people from society.

Every prison design of the past—from the Walnut Street Jail of 1790 to Bentham's "panoptican" design, from Sing-Sing to Marion — has opened with grand hopes of reforming the human spirit. Quickly each has become a vehicle for oppressing that spirit and a symbol of horror to the surrounding community.

A 1949 handbook on prison construction published by the U.S. Bureau of Prisons was for two decades the leading publication on "modern" designs. It describes "the most important and representative penitentiaries constructed in the present century."[130] Their names — Attica, Stillwater, Stateville, Jackson, Greenhaven — are now synonymous with "dungeon." Of Attica, the handbook says that when it opened in 1933, it had "the distinction of being the most expensive prison ever built. . . . The Attica prison has frequently been pointed to by penological experts as the apex or culmination of the trend towards extreme expenditure for the latest in masonry and steel to aid and embellish the jailer's art." Less than four decades later, the fruits of this embellishment were tasted in the Attica riot.

The message is not that it does not matter what is built, for each of these designs was an improvement on the past. Rather it is that we must continuously evaluate our goals and our methods of achieving them. "We have to identify the sources of the wrongdoing performed in our behalf by the state," John Conrad writes, "but we have to build on what we have. We must consider the meaning of our occasional successes and our frequent mistakes in doing what has to be done."[131]

CONTRA COSTA COUNTY:
'Taking the Tension Out'

"Only an act of God could stop this jail," one Contra Costa County supervisor proclaimed in 1975, when local opposition began to mount against a new jail planned for this San Francisco Bay area community. Its turn-of-the-century jail was one of the worst in the state. The local opposition focused on the appearance and size of the new facility the board of supervisors had approved: a windowless, six-story concrete block, with inmates housed in eight-man cells of traditional design.

But when the opponents gathered enough signatures to qualify a referendum for the ballot, the supervisors threw out $1.2 million in architectural plans and started over. The county executive appointed a broad-based study group that included representatives from churches, the American Civil Liberties Union, the NAACP and anti-jail groups. The group travelled around the country to look at other jails. They were impressed by the U.S. Bureau of Prison's Metropolitan Correctional Center in Chicago, and decided that Contra Costa County should be the first county in the U.S. to emulate this barrier-free approach.

The new facility, opened in 1981, was smaller than the original design (386 beds instead of 642) and attractive (almost $1 million was spent on landscaping). It cost $24.7 million (compared with $37 million estimated for the original plan), and was paid for without borrowing, largely through revenue-sharing funds. Since then hundreds of officials from around the world have visited this "New Generation" jail.

The basic unit is the living area: 45 individual rooms grouped around a common space. Inmates are free to circulate most of the day; they watch television on one of the three sets in the common area, or play pool, or use the small outdoor recreation yard. They can move to see visitors, attorneys or to go to classes without an escort. Carpeting and acoustical tile keep the areas quiet. Butcher-block tables, upholstered chairs and porcelain toilets and sinks (which are one-tenth the cost of institutional equipment) furnish the "cells" and common areas. Inmates are expected to take care of the furniture, and they do so; there is no graffiti or vandalism.

"We tried to make a hassle-free jail," said Les Glenn, a local representative for the National Institute of Corrections, which is monitoring Contra Costa's experience closely. "Why do inmates traditionally get only one phone call, for instance? We couldn't find a good answer to that, so we put in banks of phones. We put in three televisions in each unit to keep inmates from using it as a power tool; there wasn't a day in the old jail that there wasn't a fight over the TV." The same philosophy dictated other choices: installing washing machines and dryers, so inmates would not rip up sheets for clotheslines; putting computers in each living area to enable officers to answer quickly inmates' most common questions: When his court date is, how much his bail is, how much money he has on his commissary account.

Even more than the inmates, the officers are the real beneficiaries of this design. One officer is stationed inside the living area during the day and evenings; he is expected to mix constantly with the inmates, using informal control techniques (for which Contra Costa provides training). The officers work alone, so they will not chat with each other. "The biggest step we made was putting the officer in with the inmates," says Sheriff Richard Rainey. "The inmate's problems become his problems, and he solves them." Keeping noise and tension to a minimum makes the officer's tour of duty more pleasant. The design requires no more staff than the traditional design would have.

So far there have been no stabbings and very few fights at the jail. Inmates agree that it is very relaxed, for a penal facility. "In prison, you got to have a knife," one says. "The environment here doesn't call for a knife, or for marking up chairs. Everything's more cool."

Another relaxed area is the booking section, modeled after St. Louis's Intake Center. Arrestees often spend several hours in the booking area before being released or processed into the jail. Most of the area is a large lounge, with televisions, coffee and cigarette machines. Arrestees are summoned individually to the booking desk whenever they are needed for steps like fingerprinting, but the rest of the time they are free to do what they want. Men and women use the same area; officers say this keeps them on their best behavior. A separate room was built for drunks, with easy-to-clean furniture; volunteers chat with the drunks until they sober up, at which time they are released unless they are charged with a serious crime.

"You have to sell the concept to the community, not just to the legislative body," says Sheriff Rainey "We went around making speeches to the Rotary Club. For two weeks we had an open house and 10,000 people came through. We had an overnight stay for elected officials. A few people called this 'the Glamour Slammer,' but all the elected officials stood with us, for which I'll be forever grateful."

The institution was deliberately built with a small capacity, and within two years it was overcrowded, with 532 inmates in space for 386. This has not, however, seriously marred its functioning, and officials are searching for innovative ways to keep people out of jail.

"Even with the overcrowding, the jail works beautifully," said Capt. Larry Ard, Jail Commander, enthusiastically. But perhaps a better evaluator is an inmate: "You can't overlook the fact that it's a jail," he said. "That always stays in your mind. But this is a lot different than prison. It takes a lot of the tension out."

RESOURCE GUIDE

Organizations

American Correctional Association, 4321 Hartwick Road, Suite L-208, College Park, Maryland 20740 (301) 699-7600

American Justice Institute, 725 University Avenue, Sacramento, California 95825 (916) 924-3700

Center for Effective Public Policy, Prison Overcrowding Project, 1701 Arch Street, Suite 400, Philadelphia, Pennsylvania 19103 (215) 569-0347

Commission on Accreditation for Corrections, 6110 Executive Boulevard, Suite 750, Rockville, Maryland 20852 (301) 770-3097

Correctional Economic Center, 1220 King Street, Alexandria, Virginia 22314 (703) 549-7686

National Association of Counties, Criminal Justice Program, 440 First Street NW, Washington, D.C. 20036 (202) 393-6226

National Center on Institutions and Alternatives, 814 North Saint Asaph Street, Alexandria, Virginia 22314 (703) 684-0373

National Council on Crime and Delinquency, 760 Market Street, Suite 433, San Francisco, California 94102 (415) 956-5651

National Coalition on Jail Reform, 1828 L Street NW, Suite 1200, Washington, D.C. 20036 (202) 296-8630

National Institute of Corrections, 320 First Street NW, Washington, D.C. 20534 (202) 724-3633

National Institute of Justice, 320 First Street NW, Washington, D.C. 20534 (202) 724-3633

National Institute for Sentencing Alternatives, Ford Hall, Brandeis University, Waltham, Massachusetts 02154 (617) 893-4014

National Moratorium on Prison Construction, 324 C Street SE, Washington, D.C. 20003 (202) 547-3633

National Prison Project, 1346 Connecticut Avenue NW, Suite 1031, Washington, DC. (202) 331-0500

Prisoners and Community Together, Inc., 106 N. Franklin Street, Valparaiso, Indiana 46383 (219) 464-1400

Vera Institute of Justice, 30 East 39th Street, New York, New York 10016 (212) 986-6910

Voorhis Associates, Inc., 5796 51st Street, Boulder, Colorado 80301 (303) 530-2159

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TESTIMONY OF THE ALASKA ESKIMO WHALING COMMISSION

Introduction

The Alaska Eskimo Whaling Commission (AEWC) is an Alaska Native organization, created for the purpose of managing the Eskimo subsistence hunt of bowhead whales. The AEWC was formed in 1977 and is composed of nine Commissioners, one from each of the nine Eskimo whaling villages in northern Alaska. The AEWC manages the bowhead hunt pursuant to a Cooperative Agreement with the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). As a result of the AEWC's commitment to the preservation of the bowhead population and because of its responsibilities under the Cooperative Agreement, the AEWC also sponsors biological research and weapons research intended to improve the efficiency of the Eskimo hunt. In conjunction with its management responsibilities, the AEWC sends representatives to the annual meetings of the International Whaling Commission (IWC).

Background

The current Fiscal Year 1987 appropriation for the Alaska Eskimo Whaling Commission is $350,000. In the Senate's Commerce, Justice, State Appropriation Bill for FY 1987, the program was included in the NOAA budget under "marine mammal research." The AEWC would like to request that the current level of funding for this program be maintained for Fiscal Year 1988. The projects which comprise the bowhead whale research program include:

(1) an ice based visual census conducted for the purpose of estimating the number of bowhead whales currently in the population;

(2) a recently developed acoustical survey technique which is used to count whales that are beyond the range of the visual census;[1/]

[1/] Projects 1 and 2 are conducted during the Spring bowhead migration.

(3) the formulation and analysis of statistical population models using data from projects set forth in paragraphs 1 and 2;

(4) the biological analysis of material from harvested whales;

(5) a weapons research and development program intended to improve the efficiency of the weapons used by Eskimo subsistence whalers;

(6) a bi-annual conference on the biology of the bowhead;

(7) the implementation of the AEWC-NOAA Cooperative Agreement which involves organizing an annual meeting of whaling captains, registration of whalers, reporting on the results of the hunt and disciplining any whalers who violate the hunting rules;

(8) attendance of AEWC representatives at the annual meeting of the International Whaling Commission.

When the bowhead whale research program was initiated, very little was known about this whale. As a result of the research which this program makes possible, we have obtained preliminary estimates of the current size of the population. However, due to the fact that bowhead population data can only be gathered during the few weeks of the Spring migration, it will be several years before precise estimates of the size of the population and its rate of recruitment are available. The information which has been obtained so far has relieved concerns that the Eskimo subsistence hunt might be adversely affecting the health of the population. It is now fairly clear that the subsistence hunt, as regulated by the AEWC, is sufficiently small in relation to the size of the bowhead population, that it does not represent a threat to the continued existence of the bowhead whale. However, the IWC has required that the United States continue to conduct bowhead population research, at least until the recruitment rate of the stock can be accurately estimated.

Weapons research is one of the AEWC programs funded through these appropriations. Its purpose is to develop a modified explosive projectile for use with the weapon traditionally employed to kill the whale. The AEWC is currently working on a projectile which is substantially more lethal, thus more humane, and which is also safer than the projectile currently in use. By developing a more lethal hand-held weapon which can be used in the traditional manner, the Eskimos will be able to reduce the number of whales which are struck but lost. This is important for purposes of the subsistence hunt, since the hunt is conducted in a traditional manner, using small boats made of walrus skin and hand-held weapons and is subject to the extremely severe environmental conditions of the Arctic region.

Finally, pursuant to its Cooperative Agreement with NOAA, the AEWC is required to perform several administrative tasks each year. Representatives of the AEWC attend the annual meetings of the IWC, where quotas for the bowhead hunt are set under the International Whaling Convention. The AEWC Commissioners conduct annual negotiations with NOAA concerning the domestic implementation of the IWC quota. Prior to these negotiations, at an annual meeting of whaling captains, the AEWC gathers information from each of the whaling villages with regard to their quota needs, and following the negotiations, allocates the bowhead quota among the villages. During the Spring and Fall whaling seasons, the AEWC monitors the bowhead hunt, ensures that the quotas are observed, punishes any infractions, and reports the outcome of each hunt to NOAA.

1988 Funding Requirements

The projected funding requirements for 1988 are as follows: (1) $150,000 to sponsor the Spring bowhead visual and acoustical censuses and statistical analysis related to the census effort; (2) $50,000 to the AEWC's bowhead weapons improvement research; (3) $150,000 to the AEWC for implementation of the AEWC-NOAA Cooperative Agreement.

In the past, both the House and Senate have given explicit recognition to the tasks associated with the bowhead whale research program and the management of the bowhead hunt. In its Report on the Fiscal Year 1987 Appropriation Bill for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, the Senate Appropriations Committee referred to the research and related activities which this appropriation was intended to cover in a specific line item dedicated to the Alaska Eskimo Whaling Commission. See 99th Cong., 2nd Sess. Senate Rep. No. 99-425, p. 14. Specifically, the Senate recommended:

> that $350,000 be allocated to the Alaska Eskimo Whaling Commission for the following purposes: (1) $150,000 for scientific research; and (2) $200,000 to the AEWC's bowhead weapons improvement research, for

> International Whaling Commission representation, and for implementation of the Alaska Eskimo Whaling Commission and National Oceanic and Atmospheric Administration Cooperative Agreement.

The AEWC would like to request that this language be incorporated into the FY 1988 Senate Appropriations Committee Report on the 1988 Appropriations for Commerce, Justice, State, the Judiciary and Related Agencies. The bowhead whale is crucial to the Eskimo people and the Eskimo culture. The scientific research funded through Congressional appropriations is helping us to better understand and thus to better protect the bowhead whale. In addition, funding for weapons research is helping the Eskimos to improve the efficiency and humaneness of the bowhead hunt. Therefore, we ask that the U.S. Senate recognize the importance of this research by continuing the current level of funding for the bowhead whale research program and by providing language in its Committee Report specifying the reasons for this appropriation.

Thank you for considering this request.

PREPARED TESTIMONY

OF

CHARLES R. GUINN
CHAIRMAN

NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS

Chairman Byrd, Committee Members. I welcome the opportunity to provide you with my thoughts as you begin deliberations on Fiscal Year 1988 funding levels for energy conservation programs.

I represent the National Association of State Energy Officials (NASEO), an organization designed to foster the exchange of energy ideas and to provide a forum to discuss national, regional and state energy issues. In addition, NASEO interacts with Congress, Federal agencies and national associations to provide a state-level view of pressing national energy issues.

We at the state level are becoming increasingly concerned with the implications of recent national and international trends. For example: (1) Consumption of petroleum products was up 3 percent in the last year; (2) At the same time, American crude oil production dropped 8.5 percent; (3) U.S. oil imports were up 22 percent in 1986 to the highest level since 1980; (4) Imports accounted for 35 percent of the Nation's consumption in 1986 compared to 20-25 percent in 1985; and (5) Recent projections by the Energy Information Administration indicate that the Nation's petroleum import dependence could rise to 40-50 percent by 1990 and 50-70 percent by the year 2000.

Recent upward price trends are disturbing, as well as the escalation of fighting between Iran and Iraq.

We believe that, in order to secure the Nation's energy security and to increase the competitiveness of the Nation's economy, we must seek every cost-effective opportunity to improve our energy efficiency. We should not be lulled into a false sense of security by the recent moderation in fossil fuel prices.

With limited Federal funding over the past five fiscal years, state energy offices nationwide have assumed an increasingly important role in developing a wide range of innovative programs and activities to improve energy efficiency, stimulate economic development and improve the competitive position of each individual state's economy, which in turn translates into a stronger competitive national economy.

Moreover, we believe that by cutting spending to operate state-level energy conservation programs, the Federal government appears to be turning its back on conservation and improved energy efficiency, ignoring the hard-learned lessons of the seventies. Elimination of current Federal funding will have adverse impacts on the continued existence of state energy offices which have in the past, and will continue to be in the future, in the front line of addressing the Nation's energy problems.

For Fiscal Year 1988, the President's budget proposes to terminate Federal funding for the Schools and Hospitals, Energy Extension Service, Low-Income Weatherization Assistance and State Energy Conservation Programs. The Administration has also proposed a 32.2 percent reduction in the Low-Income Home Energy Assistance Program.

The Administration suggests that states use petroleum overcharge funds as an alternate funding source for these programs to fill in the budget gaps. However, it has been the intent of the Federal Courts in granting states relief in these overcharge cases that the funds supplement, not supplant, Federal funding for these programs. Moreover, given the widespread Federal funding cuts in all energy and low-income programs, it is unlikely that overcharge funds will be sufficient to fill in the cutbacks.

We also note that these proposed funding cuts in the SECP, EES, WAP and ICP programs constitute less than 1.5 percent of DOE's proposed $13.9 billion budget for FY'88.

We believe that the states, through the use of Federal funds under the Schools and Hospital, EES, SECP and Weatherization Assistance Programs, have designed, initiated and implemented a wide range of programs to improve the energy efficiency of residences, institutions and businesses which has translated into increase economic development activities and an improved competitive economy. The Nation's primary energy consumption per gross national product has declined by 12 percent between 1980-85 -- aided in no small measure by the initiatives of states.

Moreover, the Department of Energy recently released a report which calculated that the total cumulative savings calculated by the states under the SECP program amounted to 4.6 quads of energy in 1985.

The states are promoting innovative programs using Federal energy conservation funding. These programs include:

- Improving the energy efficiency of small businesses and industrial and commercial facilities by providing energy audits and surveys designed to improve the efficiency of these operations by identifying no-cost and low-cost energy conserving measures.

- Providing innovative financing mechanisms, demonstration and pilot programs, and grant and rebate programs to assist businesses, industries, institutions and residences to implement identified energy conserving measures.

- States have initiated and operated innovative agricultural energy efficiency programs, designed to save fuel, diversify farm production, and improve agri-business efficiency.

- Improving the efficiency of schools and hospitals through the Institutional Conservation Program. Virtually every state, as well as the District of Columbia and the territories, have initiated widescale programs targeted to schools, hospitals and health care facilities.

I have attached a description of some of the innovative programs initiated by the states for your review.

As significant as these efforts have been to date, the states have only begun to tap the potential for cost-effective improvements.

Additionally, the states have a role in regulating the efficiency of buildings through their promulgation of building codes and standards, which over the past ten years have assured that economically reasonable energy techniques are incorporated into most new construction throughout the country. Additionally, the states through their building codes, technical assistance, and seminars with builder, architects, businesses and industries, have translated the innovative work developed at the DOE national laboratories into the marketplace. The states have served as an important delivery system for the introduction of new energy conserving techniques and equipment.

The states have provided innovative programs to showcase and bring these new ideas to the marketplace. For example, in Illinois, Argonne National Laboratory and the Illinois Department of Energy and Natural Resources initiated an innovative solar energy technology program through the use of a salt pond at Argonne's Chicago facilities to provide heating and cooling.

In conclusion, we believe that there is an urgent need for a sustained Federal commitment to improve energy efficiency at the State and local level, beyond the short-term seduction of plentiful petroleum overcharge recoveries. We are very concerned that eliminating Federal conservation funds will send a signal to our citizens, businesses, industries, as well as other nations that energy conservation is not a high priority of the Federal government. We believe that energy conservation and improved efficiency warrant your continued budgetary support. A continued Federal/State partnership is necessary to enhance the Nation's energy security and to secure a competitive economy.

May 14, 1987

Robert C. Byrd, Chairman
Subcommittee on Interior and Related Agencies
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to urge your support for funding the Department of Energy's State and Local Assistance programs at a total of $200 million as recommended by the Committee on Energy and Natural Resources and as provided for in the Budget Resolution passed by the Senate. We believe that the nation's vulnerability to energy supply disruptions remains a threat to national security and that a sound national energy policy requires a continuing Federal commitment to energy conservation.

The Department of Energy's State and Local Assistance Programs (SLAP) are the backbone of the nation's capability to promote energy conservation. In their many years of operation at the Federal, State and community level these programs have developed an energy conservation information and administrative network which is a national asset. Elimination of the Federal contribution to these programs, as proposed by the Administration, would destroy this network and undermine the nation's ability to promote energy conservation.

As you know, the Administration has argued that the availability of alternative sources of funding for these programs, funding derived from petroleum overcharge settlements, allows for the termination of Federal appropriations. However, this argument is shortsighted for several reasons. First, it ignores that there is no requirement that alternative funds be allocated to each of the SLAP programs. In the event of Federal funding termination, Congress would be sending a signal to the states that conservation is no longer a high priority. As a result, programs would inevitably be terminated at the state level and the Federal capability to promote energy conservation would be seriously damaged. Second, this argument ignores that the uncertainties associated with the availability and allocation of these alternative funds has seriously disrupted the smooth operation of these programs. A Federal role is now more important than ever to provide stability to these programs during this period of disruption. Third, this argument ignores that much of the alternative funds cannot be used for program administration, yet the budget request proposes to slash administrative funding. Finally, the intention of the courts in making these funds available was to provide compensation to petroleum users who were victims of past petroleum price violations. Cutting program funds because of the availability of these compensation payments is clearly unfair.

Last year funding for these programs was cut by nearly thirty percent. We urge you to maintain the Federal commitment to energy conservation by drawing the line at a funding level of $200 million. Because $37 million are expected to be available from "excess" funds in the Petroleum Violations Escrow account, actual appropriations need only total $163 million.

We also have a concern regarding the Department's commitment to uphold congressional support for these programs. Accordingly, we also urge you to include language in the legislative history emphasizing congressional intent that staffing levels be maintained as needed to properly administer these programs, and that staff vacancies be filled with individuals having professional experience in these or similar programs. It is noteworthy that staffing for SLAP programs has fallen below the staffing floor established in the 1982 appropriations legislation.

As for the allocation of these funds among the four principal SLAP programs, we would urge that the actual allocation of funds among these programs in fiscal year 1987 be maintained, that is: $161 million for Weatherization, $25.2 million for Schools and Hospitals, $9.4 million for SECP, and $4.0 million for EES. We appreciate your support and assistance in maintaining a Federal commitment and contribution to the Nation's vital energy conservation efforts. Thank you for your consideration.

Sincerely,

Zero
Population
Growth

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to present testimony on behalf of Zero Population Growth, Inc (ZPG). My name is Susan Weber and I am ZPG's Executive Director.

ZPG is a national, non-profit membership organization which has, since 1968, worked to promote public education on the advantages of achieving a sustainable balance between human populations and their resources and environment.

Mr. Chairman, last year Congress ended a difficult six year struggle by passing a far-reaching immigration reform bill. This historic achievement was hailed by Democrats and Republicans alike.

But that achievement was only the beginning. The bill's price tag is high as the Immigration and Naturalization Service (INS) and other federal agencies begin to launch the programs written into law. Needless to say, that is not good news at a time of severe federal budget constraints.

Mr. Chairman, President Reagan's supplemental request for INS is not a good start. While the Reform Act provides for $422 million in additional funding to implement the bill, the administration's request contains only $148 million.

In FY1988 the administration is requesting $194 million in new budget authority, $225 million short of the Reform Act's authorizing level. We urge your subcommittee to support the additional funding levels for INS set out in the Reform Act.

On May 5, INS began accepting petitions for legalization. A month later the employer sanctions provision goes into effect. These are major new programs affecting millions of people. Without sufficient resources, INS will be ill-prepared to process hundreds of thousands of applications, enforce employer compliance with the law, and patrol our borders.

Once the message goes out that compliance will not be monitored because the programs are underfunded, it will be difficult in future years to reestablish the credibility of the new programs.

Funding Legalization

Mr. Chairman, one area of concern for ZPG is the administration's proposed method of funding the legalization program. We reject the argument that legalization applicants should have to "buy" their way into the U.S.

By law, applicants must have "continuously resided" in the U.S. since January 1, 1982. That means that for at least five years the applicants have paid taxes and become an established part of our society. They are not newcomers.

ZPG believes that it is fair to impose an application fee to cover some of the administrative costs. However, we think it will be more effective and more in keeping with the intent of the Reform Act to provide an upfront appropriation that supports the program in its initial phase.

Immigration Statistics: The Story of Neglect

Mr. Chairman, in 1981 the Immigration and Naturalization Service reported to Congress that there were between 8 to 12 million illegals in this country. Five years later, they are preparing to process legalization applications for only three million. Where did all those people go?

No one has the answer. A National Academy of Sciences study on immigration statistics concluded that "we really do now know anything concrete about the costs and benefits involved because the basic statistics are so limited."

Ironically, just as Congress is asking INS and other federal agencies to produce a dozen new immigration reports, the Office of Management and Budget (OMB) is forcing all federal agencies to cut back on data collection. In fact, at the urging of OMB, the Justice Department is planning to cut its statistical analysis and data gathering department by 20%.

We feel strongly that more resources and emphasis -- not less -- should be placed on data collection at the INS. Without accurate, timely information, Congress will be left groping in the dark.

In conclusion, Mr. Chairman, when discussing the immigration issue we can't isolate our discussions from one fiscal year to the next. It is critical that long-term demographic considerations also be examined. For the costs of ignoring population trends could be staggering.

Without a change in present trends, the world's population will top 6 billion by the year 2000 - increasing by 82 million a year. Ninety percent of this growth will occur in Latin America, Asia and Africa, where hundreds of millions of people will be streaming toward cities looking desperately for work. Already 500 million of the world's people either have no jobs or are so badly underemployed that they have difficulty making a living at even a subsistence level. Defeated by recession, deep debt and austerity, increasingly they will look to the United States for help.

If we are to deal with U.S. immigration policy over the long term as well as in the short run, we must address the circumstances which cause people to migrate from their native lands. Our nation's immigration goals and limits should be linked to a strong, comprehensive, cooperative international program in which more U.S. financial and technical assistance is directed to help other countries carry out family planning programs, create jobs and promote economic opportunities and stability.

The Select Committee on Immigration and Refugee Policy made this point in 1981, when it recognized "that the world situation throws into serious question whether any nation can respond through domestic policy alone to what is already a problem that transcends national boundaries."

Mr. Chairman, thank you for the opportunity to express ZPG's views before your subcommittee.

us-ecre
United States Export Council for
Renewable Energy

TESTIMONY

by

Scott Sklar
Executive Director

INTRODUCTION

The U.S. Export Council for Renewable Energy (US-ECRE) was established in 1982 as the umbrella organization of the U.S. renewable energy trade associations to promote exports and international trade. The technologies US-ECRE promotes are alcohol fuels, biomass, cogeneration, geothermal, hydropower, passive solar, photovoltaics, solar thermal, wind, and wood technologies.

On behalf of the U.S. renewable energy industry I am asking this subcommittee to support our industry in two specific ways:

o Expand the activities of the U.S. Department of Commerce on behalf of U.S. renewable energy industry as a supplement to their activities already mandated under P.L. 98-370.

o Direct the Department of State to utilize renewable energy applications at our embassies when cost effective or as appropriate under the same terms required by the U.S. Department of Defense under section 801(a)1, chapter 141, Title 10 U.S.C., section 2394.

Neither of these requests by industry would cost the U.S. taxpayer any money but rather increases U.S. industry business opportunities thus helping the U.S. trade deficit and providing more energy efficient and safe embassies abroad.

COMMERCE

In 1984, the U.S. Congress passed P.L. 98-370 which created a federal interagency working group to coordinate the promotion of U.S. renewable energy exports. The industry, through US-ECRE, pushed for this legislation to meet the growing competitive threat from other industrial nations. The U.S. Department of Energy coordinates the Committee on Renewable Energy Commerce and Trade (CORECT) and the U.S. Department of Commerce along with fifteen other federal agencies and entities actively participate in the CORECT subcommittees.

The U.S. Department of Commerce has funded the industries' participation in trade shows and market studies in the Pacific Rim and Caribbean Basin. While the U.S. Department of Commerce has supported our industry in both the letter and spirit of the law, two simple activities could be suggested by this Subcommittee which will aide our industries in the world markets.

The markets for renewable energy exports fall into four basic areas:

- o rural development - power for water pumping and irrigation, electric fences, lighting, and heat for food processing

- o communications - power for telephones, transmitters, satellite dishes, radios, TV's and computers

- o health care - power for lighting, refrigeration of medicines, and energy for hospital services

- o micro-utilities - power for economic development to provide electricity for seventy-five percent of the world's population that doesn't have access to electric power

As a result, the U.S. renewable energy industry needs to actively participate in trade activities abroad in rural economic development, communications, healthcare in addition to the energy trade assistance efforts we currently receive. Therefore, the industry would like a

Congressional directive to the Department of Commerce setting aside $150,000 for FY'88 to include U.S. renewable energy companies in ongoing Department of Commerce programs in commmunications, healthcare and rural development.

STATE

Our industrial competitors, such as Japan, have been very skillful in using demonstrations of their renewable technologies at Japanese commercial and diplomatic facilities abroad. Over the last ten years, the U.S. Department of Energy has monitored renewable energy applications in federal buildings and now offers free design assistance and evaluation for federal utilization of renewable energy applications. The U.S. Department of Defense has been required to procure renewable energy devices when cost-effective as a result of the Mavroules amendment in 1982.

The U.S. Export Council for Renewable Energy (US-ECRE) requests that this Subcommittee instruct the State Department to meet with the U.S. Department of Energy and representatives of the U.S. renewable energy industry, on a timely basis, to ascertain if renewable energy applications should be used in U.S. missions and embassies abroad. Our industry also requests that the report language require the Department of State to report back to the Committee their findings and progress in this regard.

Utilization of renewable energy devices will do far more than provide the U.S. industry with sales and exposure abroad to compete effectively in the world markets. First, the U.S. Department of Energy can show clear energy savings. Since the U.S. taxpayer pays the utility bills for the life of these facilities, incorporation of energy saving devices makes good economic sense.

Second, the U.S. Congress is spending billions of dollars to make our embassies less susceptable to terrorism. However, GAO reported in 1986 that over 85 percent of our embassies and military bases overseas rely on the local utility grid. Renewable energy devices can be the insurance policy that our facilities can produce and store energy on-site. Access to energy at all times or for use in back-up systems when conventional energy systems fail is of upmost importance. However the State Department refuses to work with our industry while the Department of Defense actively does. Our industry needs some Congressional intervention, and I hope our request which requires no additional funding can be incorporated in the Subcommittee's bill.

CONCLUSION

The U.S. renewable energy industry is in a fight for its life. Over half our sales are abroad. Yet our technologies which the United States financed in research and leads in technology, is losing market share to our industrial competitors. The industry needs some minor assistance to broaden U.S. Department of Commerce support and leverage the cooperation of the Department of State.

By strengthening the renewable energy industry, the United States will improve its trade balance, the taxpayers will save money, and our facilities abroad will be more secure.

NATIONAL COLLABORATION FOR YOUTH
An affinity group of The National Assembly of National Voluntary Health and Social Welfare Organizations, Inc.

May 12, 1987

The Honorable Ernest F. Hollings
United States Senate
Senate Appropriations Committee
Subcommittee on Commerce, Justice,
State, the Judiciary
S 146A U.S. Capitol
Washington, D.C. 20510

Dear Senator Hollings:

The National Collaboration for Youth (NCY), an affinity group of The National Assembly of Voluntary Health and Social Welfare Organizations, Inc., is requesting that this letter be included in the Record of the Public Witness Hearings.

Members of NCY are national youth serving organizations who collectively work with over 25 million children, each and every year. These organizations have formed a working relationship around the many issues affecting young people and their families. For over 10 years, Juvenile Justice and Delinquency Prevention have been a focal point of our efforts. We, as a Collaboration, are especially concerned about the appropriations level of the Juvenile Justice and Delinquency Prevention Act (JJDPA).

The federal initiative, mandated by the legislation, has encountered many barriers during the last seven years, due in large part, to an administration position which seeks to eliminate the program, coupled with a spending freeze (the only exception was in FY 1983) the program has experienced since it received a 30 percent loss in funding for FY 1982.

The National Collaboration for Youth is strongly urging that the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, under your leadership, restore the Juvenile Justice Programs to its FY 1981 level of $100 million.

Decisions will need to be made during this year as compliance with the jail removal mandate (removing juveniles from adult jails and lock-ups) comes due. The incentive this legislation gives to states needs to be re-enforced and a reaffirmation of federal leadership demonstrated.

Local programs assisting our most vulnerable youth have suffered over the last seven (7) years. State plans to implement the mandates of laws are in a "Catch 22" position as deadlines come due and the message from the federal government is, make do with what you have.

NCY feels that it is only rational and realistic for the federal government to at least acknowledge a cost increase in services within an inflationary framework. An increase in FY 1988 of $3,550,000 would at least stop the cuts the state/local programs has incurred in real dollars since FY 1983 and bring the FY 1988 appropriation to $73,839,000.

Besides this minimal consideration of an inflationary increase, we are most fervently supporting and asking the Subcommittee to consider a full restoration of Juvenile Justice funds to their FY 1981 level of $100 million.

In closing, please include the enclosed policy statement, in the Record as it clearly states our position on the legislation, and the needs of the young people.

Sincerely,

Margaret Gates

Margaret Gates
Chair
National Collaboration for Youth

Policy Statement
JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Background Materials

I. Elaboration of National Collaboration for Youth (NCY) Policy Statement

The Juvenile Justice and Delinquency Prevention policy of the NCY supports:

A. Comprehensive delinquency prevention programs that meet the developmental needs of youth through coordination of the many systems in which any individual youth may appear: schools, courts, law enforcement agencies, child protective services, welfare services, health care, and nonprofit organizations offering youth services.

B. Recognition of the unique and pivotal role that voluntary organizations play in American society and in the socialization of youth, and the significant part played by these organizations in providing community-based services to delinquent and high-risk youth, and prevention services through positive youth development programs.

Youth-serving organizations and other community-based groups provide effective programs tailored to the specific needs of the community and the individual needs of the youth involved. Such agencies often provide the intervention in a young person's life that makes the difference. Role models, mentors, and mainstream peer groups can positively affect the behavior of a young person whose family or school environment has not provided the necessary support. In addition to its experience in youth development, Collaboration agencies have substantial experience in promoting voluntarism and in developing partnerships to unite governmental, nonprofit, and for-profit resources to solve problems. Such expertise, and that of other neighborhood and community-based groups, should be clearly recognized and utilized in federally-supported juvenile justice and delinquency prevention efforts.

C. Federal leadership and an office within the federal government to carry out a program to prevent delinquency and to reform the juvenile justice system, as well as sufficient funds to carry out these programs.

D. Whenever possible, removing status offenders from the jurisdiction of the juvenile courts and assisting them to become reconciled with their families.

the national network
of Runaway and Youth Services, Inc.

May 12, 1987

The Honorable Ernest F. Hollings
United States Senate
Senate Appropriations Committee
Subcommittee on Commerce, Justice,
  State, the Judiciary
S 146A U.S. Capitol
Washington, D.C. 20510

Dear Senator Hollings:

The National Network of Runaway and Youth Services, Inc., would like to submit the following statement for inclusion in the record of the Public Witness Hearing on Appropriations.

As a national organization, whose membership works daily with young people, we would like to call your attention to the funding of the Juvenile Justice programs. These programs were established by the enactment of the Juvenile Justice and Delinquency Prevention Act (JJDPA) in 1974, and have made great strides in accomplishing its goals to:

** prevent juvenile delinquency
** divert juveniles from the juvenile justice system
** provide community-based alternatives to confinement
** encourage a diversity of alternatives within the juvenile justice system
** establish and adopt juvenile justice standards
** provide programs for juveniles (including those who have committed serious crimes) particularly programs which are designed to improve sentencing procedures
** provide resources necessary for informed dispositions
** provide for effective rehabilitation
** facilitate the coordination of services between the juvenile justice system and criminal justice systems

One of the most difficult barriers to further progress, however, is the cuts states suffered in FY 1982. In that year alone, the appropriations for JJDPA were cut by 30 percent ($30 million) and have averaged $70 million since that time with not even an inflationary increase. Compare this to the entire Justice Department's Budget which has increased by 61 percent during the same time frame.

The National Network and its membership of over 1,000 community-based youth serving agencies is strongly urging that FY 1988 be the year that this subcommittee under your leadership work towards restoring Juvenile Justice programs to its FY 1981 level of $100 million.

We are not requesting an increase, but rather a recommitment of resources sorely in need by every state in this country, and to the benefit of young people and their families.

While not outlining a restoration of funds, the House passed budget (again this year) includes Juvenile Justice programs as needing a high priority/low income status. Assumptions are made for these programs, which include baseline funding, plus inflation. The Senate budget on the other hand, simply stated it rejected the President's proposal to zero out the program. A similar recommendation was made last year (FY 1987) to include inflation increases and while the Juvenile Justice programs were restored to their pre-FY 1986 Gramm-Rudman-Hollings level, no inflationary costs were attached.

An inflationary increase in FY 1988, for only that one year, would amount to $3,550,000, bringing the FY 1988 appropriation to $73,839,000. While this does not come close to covering the inflation costs over the last seven years, nor even touch the replacement of cut funds, it would be a minimal sign to a renewed federal concern.

If Congress had maintained their commitment to young people and their families at the FY 1981 level and given states an inflationary increase each year since then, the funding level of JJDPA would be at $140 million (figuring inflation at 5 percent each year since FY 1981).

With this kind of commitment, there would have been a true sense of federal leadership sent to the states in both financial assistance and guidance. States would have been encouraged in their formation of community-based programs, agressive development of programs aimed at the Prevention of Delinquency and care of its "Young Americans." We would today surely be much closer to the goals of:

** removing juveniles from adult jails and lock-ups
** deinstitutionalizing status offenders
** developing model programs
** separating of adult and juvenile offenders
** forming community-based alternatives to the warehousing juvenile offenders

Congress cannot, however, make these claims, but they can beginning in FY 1988, restore Juvenile Justice programs to its FY 1981 funding level of $100 million--and not ignore another generation of adolescents.

Sincerely,

June Bucy

June Bucy
Executive Director

Working for the Nature of Tomorrow
NATIONAL WILDLIFE FEDERATION

May 20, 1987

The Honorable Ernest Hollings
Chairman, Subcommittee on Commerce, State,
The Judiciary, and Related Agencies
Room 125
Russell Senate Office Building
Washington, DC 20510

Dear Chairman Hollings:

The National Wildlife Federation (NWF) is providing you with comments on the fiscal year (FY) 1988 budget for the National Marine Fisheries Service (NMFS) an agency of the National Oceanic and Atmospheric Administration (NOAA). We are submitting these comments for inclusion in the record for the hearing your Subcommittee held on May 13 in regard to FY 1988 budget proposals for NOAA agencies. We appreciate the opportunity to provide these comments for your consideration.

The NWF is the Nation's largest not-for-profit conservation-education organization, with over 4.6 million members and supporters throughout the United States and in 51 affiliated state and territory organizations. Recreational and commercial fishing groups are among our membership at the local and state level. The NWF consistently has requested funding levels adequate for important marine and anadromous fisheries programs and supports the scientific management of our Nation's fisheries resources and their habitats.

The NWF is concerned by the Administration's proposal to reduce by 40 percent funds from the NMFS budget for Operations, Research, and Facilities, and to cut 300 FTE's from its staff. Such reductions in staff and funding would erode seriously the agency and prevent it from carrying out its mission of stewardship of our Nation's living marine resources. We oppose the cut and respectfully request the Subcommittee to restore these funds to the FY 1988 budget.

Mr. Chairman, the NWF has provided comments to this Subcommittee over the past several years to protest Administration budget proposals that consistently seek to cripple NMFS programs. The record will show that during this time we have asked you to fund the service at levels above the agency request for almost every program. This year is no different.

While, on the surface, the proposed reductions may have appeal, in reality the Administration has adopted a "penny-wise-pound foolish" approach to funding NMFS. Whereas the Administration is quick to report that cutting the NMFS budget by 40 percent in FY 1988 will save $62 million, what it isn't telling you is that such deep cuts would jeopardize the federal government's ability to manage and protect marine resources which are worth many times that sum, in terms of recreation, jobs, and food, to the people of this Nation. This is a value received each year, year in and year out -- if the resources are managed properly.

One immediate concern to be highlighted in these comments is the need for expeditious implementation of turtle excluder devices (TED) pursuant to the proposed regulation published by NMFS in the Federal Register on March 2, 1987. The NWF does not believe that delay of this regulation serves any useful purpose. We urge you to reject any effort to delay the TED regulation by means of the appropriations process.

Our specific requests for funding the NMFS programs are appended to this statement as Table 1. However, there are several other programs and issues important to the NWF:

TURTLE EXCLUDER DEVICES

On March 2, 1987, the NMFS proposed regulations designed to protect the five species of threatened and endangered sea turtles by requiring certain shrimp trawlers to use TEDs. It is estimated by the agency that 12,000 turtles die annually as a direct result of trawling activity. The new gear modification was to be used only in those areas of the Gulf of Mexico and south Atlantic, and during certain times of the year, known to be critical to the survival of these species. The NMFS had been expected to promulgate the final rule by June 1987.

Yet, even before the opportunity for public comment on the proposed regulation had ended, the House included in its FY 1987 supplemental appropriations bill an amendment preventing NMFS from implementing or enforcing the regulation in the western portion of the Gulf. As you know, this amendment also was included in the Senate version of the FY 1987 supplemental appropriations bill, and it appears likely this temporary delay will become law soon.

We fully expect proponents of that amendment again to seek delay through your Committee in the FY 1988 appropriations process. The NWF recommends you reject any efforts to legislate additional delay of TED implementation. There are many sound reasons for this recommendation:

- TEDs are effective. They will reduce turtle mortality by 97% while maintaining shrimp catches equal to standard rigged trawls.
- TEDs reduce by-catch of fish and other marine life. Tests have shown that TEDs can reduce by-catch by 30-70%. Shrimpers will benefit through improved trawling efficiency, and commercial and recreational fishermen will benefit from the reduction in fish mortality, which has been estimated at 1.5 billion pounds of fish caught by shrimpers (most of which are discarded) in the Gulf alone.
- The ongoing work of the Environment and Public Works Committee on reauthorization of the Endangered Species Act (ESA) and related issues, such as TEDs, should not be obstructed.

On a related point, Mr. Chairman, we believe adequate education and information transfer must accompany the new TED requirement if it is to be truly effective. For this reason the NWF recommends adding $900,000 to the NMFS FY 1988 budget for an intensified "dock-side" education and information transfer program for shrimpers on the proper use of TEDs. A vigorous and positive educational program on TEDs will -- in our estimate -- dissipate much of the concern and strident opposition currently held among Gulf coast shrimpers.

MARINE FISHERIES CONSERVATION ASSURANCE PROGRAM

The Administration has proposed again this year to institute a system of user fees -- fishing permits, stamps, landing fees, a $25 "gamefish" stamp -- to offset approximately $29 million of the proposed $62 million cut in NMFS budget. Although this proposal is more comprehensive in scope than last year's Ocean Sportfishing license proposal, it continues to be seriously flawed. Although the specific details of the proposal are unknown, it appears that, under the current plan, the average marine angler would have to pay a total of $31 each year to fish. When added to existing state marine fishing license charges already incurred by many marine anglers, this additonal financial burden becomes unreasonable.

Further, use of these revenues is a serious concern. Some of the "user fee" revenue would be allocated to the states, while the remainder appears targeted for the federal Treasury to reduce the federal deficit. The NWF, as well as most other fishery conservation groups, cannot support collection of "user fees" that will not be invested back into either federal or state fishery management benefitting the user. This closed loop feature, or "user pays-user benefits", must be a basic component of any marine fishery user fee proposal before the NWF will begin to consider such initiatives.

The NWF is a strong supporter of user fees and angler licensing as a means to fund fishery management. Moreover, for many years we have advocated state licensing of marine anglers. Thus, while we are not opposed to the concept of licensing, we are opposed to federal licensing of anglers fishing in state territorial (non-federal) waters. For these additional reasons, the NWF must oppose the Administration's proposal.

HABITAT CONSERVATION

The NMFS's Habitat Conservation Program fulfills the agency's habitat protection responsibilities through various consultation requirements mandated by environmental statutes, such as the National Environmental Policy Act, the Endangered Species Act, and the Fish and Wildlife Coordination Act. The Administration's FY 1988 budget proposal would reduce funding of the Habitat Conservation Program by 43 percent, cutting $2.3 million from the FY 1987 level of $5.3 million.

Protecting marine habitat is essential to ensuring the maintenance of many benefits the Nation derives from our living marine resources. The success of this Habitat Conservation Program is tied directly to protecting adequate amounts of quality marine-estuarine habitat. An important component of the program is the permit review process in which NMFS biologists review and comment on thousands of development permit applications that would affect thousands of acres of wetlands and many important marine fishery species. This work is essential to the program and cannot be compromised.

To ensure the continued function of this vital program, the NWF recommends that $2.3 million be restored to the Habitat Conservation Program to maintain the FY 1987 level of $5.3 million.

HABITAT RESEARCH

Habitat research is one of the most important aspects of NMFS' research program because it provides information needed to evaluate and mitigate the effects of wetlands loss, pollution, and other forms of environmental degradation affecting fishery production. The FY 1988 budget proposal would reduce funding of habitat research by 36 percent, cutting $5.1 million from the FY 1987 level of $13.9 million. This research work is vital if the United States is to understand and manage the impacts of coastal development effectively.

Therefore, the NWF recommends that $5.1 million be restored to the habitat research program to maintain the FY 1987 level.

HABITAT EVALUATION METHODOLOGY

The Habitat Evaluation Methodology Program, which the Administration's proposes to terminate by eliminating funding (-$500,000), provides high priority research to address, in an innovative way, those habitat issues of greatest concern to the NMFS. Researchers at the Beaufort, NC laboratory are working to establish the functional importance of wetlands habitat to fishery resources and to develop predictive models to assess the effects of large-scale wetlands loss on important estuarine-dependent species (e.g., striped bass, bluefish, menhaden). This research will be of benefit to NMFS's regional habitat program, and to biologists and coastal planners throughout the U.S. in their efforts to conserve fishery habitat in the U.S. coastal zone.

The NWF recommends the addition of $1 million to the Habitat Evaluation Methodology Program.

OTHER RESEARCH NEEDS

In addition to the NMFS habitat research program, many other research programs face elimination or reductions to the point of being functionless. The NWF is concerned especially about the Administration's proposal to close and/or reduce staffing in several important federal research facilities. For example, the Administration proposes to close the Gloucester (MA), Oxford (MD), National Fisheries Engineering (MS), Galveston (TX), and Tiburon (CA) laboratories. Five more laboratories are scheduled for deep cuts in budget and staff. The Administration stands by these reductions despite the need of the Fishery Management Councils for vital fisheries statistics and stock assessment estimates.

The NMFS laboratories and research programs constitute a valuable national resource of technology, equipment, facilities and knowledge that providing essential data to address marine resource management problems. The Administration's cuts would undermine these capabilities severely.

The NWF recommends that funds and staff be fully restored to maintain all NMFS laboratories and high priority Information Collection and Analysis programs at FY 1987 levels.

ANADROMOUS FISH CONSERVATION

This program provides grants to states for the annual monitoring of, and research on, economically valuable and man-impacted anadromous fish, such as striped bass, American Shad and other river herring fisheries. Continued state and federal cooperation is vital if the conservation and management programs aimed at restoring these fisheries are to succeed. Continued funding of the Emergency Striped Bass Program on the Atlantic Coast is essential to complete current research, the results of which will likely provide many of the answers needed to reverse the drastic decline of the striped bass. The Administration proposes to cut Anadromous Fish grants by $2.5 million and to eliminate all funds for the Emergency Striped Bass Program.

We oppose these cuts and recommend funding the Anadromous Fish Conservation program at $3 million, including $0.5 million for the Emergency Striped Bass Program.

REGIONAL FISHERY MANAGEMENT COUNCILS

The Regional Councils were created by the Fishery Conservation and Management Act (P.L. 94-265) and are charged with planning, monitoring, and managing marine fisheries of the eight regions. The Administration's FY 1988 budget proposes to cut funds for the Councils by roughly 50 percent. This cut would impair seriously the important mission of the Councils at a time when many species are still in need of fishery management plans, many existing plans need revising, and allocation struggles continue for species important to commercial and recreational fishermen.

Therefore, NWF recommends restoring $4.1 million for the Regional Councils to maintain the FY 1987 level of $8 million.

Mr. Chairman, this completes our comments on the FY 1988 budget of the NMFS. We look forward to working with you and your staff in the coming months to help ensure that the NMFS remains on sound and solid financial footing.

Thank you for the opportunity to provide these comments.

Sincerely,

Lynn A. Greenwalt

Lynn A. Greenwalt
Vice President
Resources Conservation
Department

Encl.

Table 1. Summary of the National Wildlife Federation's Recommendations on the Fiscal Year 1988 Budget of the National Marine Fisheries Service

Program	NWF recommended additions to Administration's proposed FY 88 budget (dollars in thousands)	Additional NWF recommendations/ comments
Information Collection and Analysis*		
Resource Information		
Surveys	1,078	
Habitat Research	5,133	critical program given high priority by NMFS Habitat Policy.
Habitat Evaluation Methodology	1,000	
Chesapeake Bay Studies	1,500	
Pacific Salmon Treaty	5,000	
Stock Enhancement and Disease, Aquaculture	3,097	
West Coast Groundfish Research	900	
Protected Species	1,275	
Information Analysis and Dissemination*		
Nearshore Research and Analysis		
Estuarine and Nearshore Ecosystems	738	
Improve Stock Predictions	236	
Conservation and Management		
TED Education-Information Transfer	900	essential for TED regulation
Regional Fishery Management Councils	4,100	
Columbia River Hatcheries	8,254	
Habitat Conservation	2,300	critical program given high priority by NMFS Habitat Policy.
State and Industry Assistance (Grants to States)		
Anadromous Fish Conservation Act		
State Grants	2,500	
Striped Bass	500	
Interjurisdictional Fisheries	4,000	

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*Maintain research laboratories at Oxford, MD; Gloucester, MA; National Fisheries Engineering, MS; Tiburon, CA; and Galveston, TX.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will be in recess until Wednesday, May 20 at 9 a.m. when we will hear the Legal Services Corporation followed by the various judicial agencies.

Thank you.

[Whereupon, at 12:35 p.m., the subcommittee was recessed to reconvene at 9 a.m. May 20, 1987.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1988

WEDNESDAY, MAY 20, 1987

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:05 a.m. in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman).

Present: Senators Bumpers, Chiles, Lautenberg, Sasser, Rudman, Hatfield and Kasten.

LEGAL SERVICES CORPORATION

STATEMENT OF JOHN BAYLY, JR., PRESIDENT, LEGAL SERVICES CORPORATION

ACCOMPANIED BY:

- CLARK DURANT, CHAIRMAN OF THE BOARD, LEGAL SERVICES CORPORATION
- MICHAEL WALLACE, MEMBER OF THE BOARD, LEGAL SERVICES CORPORATION
- THOMAS SMEGAL, MEMBER OF THE BOARD, LEGAL SERVICES CORPORATION

BUDGET REQUEST

Senator RUDMAN [presiding]. The subcommittee will come to order. I will thank for the record, the chairman, Senator Hollings, for the rare opportunity to chair this hearing of the subcommittee.

I want to apologize for having to change the date. That is because I found it impossible to work around my own schedule for the select committee. I thought that I ought to be here for this. This is the last day of hearings for the Subcommittee.

I want to begin with the Legal Services Corporation request for $305 million. I expect that Senator Bumpers will arrive, and he will chair the rest of the hearing, which is on the Judiciary, Courts of Appeals, District Courts and other Judicial Services, the State Justice Institute, the Sentencing Commission and Justice Burger on behalf of the Commission of the Bicentennial of the U. S. Constitution.

We have four officers for the Legal Services Corporation: John Bayly, Jr., President of the Corporation, as well as Mr. Clark Durant, Chairman of the Board, and two board members, Mr. Michael Wallace and Mr. Thomas Smegal.

Due to time pressures, I am going to ask that you summarize your statements, hopefully, in less than 5 minutes, if you can.

Your complete statements will be part of the hearing record. When we get into questions, I will just put them out generally, and any one of you who wishes to answer may, with the exception of a few that I may want to direct a specific witness. So why don't you proceed.

STATEMENT OF CLARK DURANT

Mr. DURANT. Senator, I am Clark Durant, Chairman of the Board. I would like to first say that I appreciate the fact that you do take time to come from the Iran-Contra hearings to attend this Appropriations hearing, which shows a continuing interest in the Legal Services, and I think that is important both for the health of the program and also in terms of a fair and accurate way to develop a reading of the record for an appropriations decision, and I am glad that you are here.

I would just like to summarize very briefly, because I know the time constraints, and essentially to say three things: The Board, after much deliberation, came to a determination to submit, again to Congress, the same budget that Congress has appropriated in the past 2 years, $305 million.

OUTSIDE FUNDING

We do that essentially based on three things: One, that we believe that there has been a tremendous amount of outside funding that has come into being because of not only the support of the Legal Services Corporation, but because of the ABA and others. Through IOLTA, over $100 million has been raised through the program; approximately $44 million of that has been disbursed.

PRO BONO WORK

The tremendous explosion in pro bono work has made a magnificent addition to the staff lawyers. We do work long and hard in bringing direct services. In fact, President Eugene Thomas of the ABA in his statement before the House Appropriations Subcommittee indicated that in Florida alone, pro bono, according to a scientific study that he cited, provided the equivalent of $35 million in services in Florida alone.

There are approximately 96,000 lawyers in the ABA, and those not in the ABA were delivering on a regular basis pro bono services.

STRUCTURAL PROBLEMS

One of the things, however, that does distress me, and I think is important, from not only—because this committee has two of the members of the Gramm-Rudman-Hollings reform—is that while the ABA comes before this committee oftentimes and asks for substantially more funds, I think that the problem is not just a money problem.

I think there is a structural problem that I think Congress can support, and, I would hope, recognize, and that is essentially—the chairman has read my speech that I gave to the ABA in New Orleans. In fact, I want to give to you, Senator, a copy of a book that I think deals specifically with those problems, "The Question of Occupational Licensing in America" and how, in fact, the laws that do protect the legal profession, in fact, work to the detriment of the poor and work to bring about higher costs and fewer services and that I think that—here you are, sir.

I was asked, in fact, to, after my speech in New Orleans—I had seen the draft of that, the work that Dr. Young had done—and I was asked to write a forward to the book, because I think that the whole problem of the inconsistency of the ABA asking for substantially more money and yet, on the other hand, in effect, building a dam across a river and complaining about the lack of water in the fields.

If, in fact, we can have more deregulation in our own profession, I think that we will be able to broaden the base of service-providers, people providing directly for not only poor people, but for the near poor, as well.

STAFF LAWYERS

I want to say before I close that I think it is also important to recognize that the staff lawyers—because I think this was not clear from my statement in New Orleans—I think the staff lawyers, many of whom I have met in cities throughout this country, do perform excellent work under very difficult circumstances, sometimes, to try and deal with the ordinary problems of poor people.

I don't want the record to go without me publicly acknowledging that. But I think it is important to say that if we are serious about this problem—not a minimum access to justice but maximizing access to justice—Congress, as it did with Gramm-Rudman-Hollings, must recognize that there needs to be structural reforms and to send a message of that sort as well.

We have with us today Michael Wallace, who is the Chairman of our Operations and Regulations Committee, who will address three of the changes we request in our budget regarding legislation; Tom Smegal, who will be presenting a minority report on the budget.

[The prepared statement of Clark Durant follows:]

PREPARED STATEMENT OF WILLIAM CLARK DURANT III

CHAIRMAN

BOARD OF DIRECTORS

LEGAL SERVICES CORPORATION

Good morning, Senator Rudman, and members of the Subcommittee. I am Clark Durant. I am a partner with the law firm of Durant and Durant in Detroit, Michigan. I serve as the Chairman of the Board of Directors of the Legal Services Corporation (LSC). Accompanying me this morning is Michael B. Wallace, who is the Chairman of the Committee on Operations and Regulations of the LSC Board of Directors. Mr. Wallace's statement will focus on the Corporation's three requested changes in the legislative language that will accompany its Fiscal Year (FY) 1988 appropriation. Also accompanying me is Thomas F. Smegal of the LSC Board of Directors. Mr. Smegal will present a minority report on LSC's FY 1988 budget request to the Congress. Finally, also with us this morning is John H. Bayly, Jr., who is President of the Legal Services Corporation. Mr. Bayly, who also is an ex officio member of the LSC Board, will have a brief statement to make this morning.

Mr. Chairman, as you know, the Legal Services Corporation is requesting an appropriation of $305.5 million from the Congress for FY 1988. The LSC Board of Directors adopted this budget mark by a vote of 6 to 5 at its meeting on January 30, 1987. A 5-member minority on the Board supported a higher budget mark of $325 million. As you also know, on April 9, the House adopted a FY 1988 budget resolution calling for an appropriation of $320 million to LSC. The Senate budget resolution adopted on May 6, on the other hand, provides for an appropriation of $305.5 million to LSC.

At this Subcommittee's "public comment" hearing on May 13, the Chairman of the American Bar Association's House of Delegates, Michael McWilliams, urged Congress to appropriate $360 million for LSC. In her testimony before your Subcommittee on the same date, Martha Bergmark of the Project Advisory Group (PAG), an organization of local legal services providers, recommended an appropriation of $391 million. Finally, William Whitehurst, of the group calling itself "Bar Leaders for the Preservation of Legal Services for the Poor," supported the PAG recommendation.

Mr. Chairman, I believe that I fully understand the sincere motivations behind these calls for a substantial increase in LSC's appropriation. But I disagree. The problem at the outset is not a dollars one. It is a structural one. As with many other programs, by simply appropriating more dollars without addressing the structural problems endemic to the system of legal services delivery, we fail in our responsibility to increase the access to justice for the poor--and for everyone else.

The greatest barrier to widely dispersed low-cost dispute resolution services for the poor, and for all people, could very well be the laws protecting our profession; laws which, although arguably designed to protect consumers, have the unintended consequences of creating a cartel. Like any such laws, they limit or distort supply; they increase price; and they create dislocations in the marketplace. Beyond that, these laws create a shortage of advocates for the poor.

I submit that the calls from the bar and from others seeking funding increases are like calls for more water to fill a dammed river. We hear cries that the lake is below capacity. Then we hear cries of drought downstream. There must be something wrong with the dam. As with the dam we cannot look at the legal services budget in isolation, ignoring the structural problems contributing to the agony downstream. Although Congress cannot legislate away the barriers currently existing, it must send a clear signal that it is ready to support greater opportunities through competitive grants and through the promotion of alternatives to delivery mechanisms which depend so heavily on the current monopoly structure of the organized bar.

The legal monopoly rests on two major pillars. The first are laws that set aside specific work exclusively for lawyers. Anyone else who performs "lawyer's work" may be prosecuted for the unauthorized practice of law. The second is a series of restrictions on how one may become a lawyer. These restrictions are really barriers to competition, not guardians of competence.

Stanford Law School Assistant Professor Deborah Rhode concluded an exhaustive study of UPL statutes and practice by observing that "At every level of enforcement, the consumer's need for protection has been proclaimed rather than proven." The use of UPL prosecutions is "inconsistent, incoherent, and, from a policy perspective indefensible," she says.

We should encourage at every turn the ability of entrepreneurs, para-professionals, independent paralegals and lay people to be a part of the delivery of legal services for the poor and for all people. But how can doors be opened to others to participate in this profession? I propose that we begin this effort with a repeal of state unauthorized practice of law statutes. Congress cannot repeal these acts. But Congress can exercise its moral authority to challenge the bar to break the logjam and permit more services to be provided to the poor through competitive markets. Just as the removal of barriers in other fields brings more services to the poor, a lowering of barriers here will generate more advocates at substantially reduced costs.

Combined with UPL statutes across the fifty states, the LSC in its current form actually contributes to the suppression of diversity both in types of services and service providers. This in turn contributes to the protection of incumbent private and public service providers from competition.

Under the current structure of the LSC, client choice is limited to one set of providers of a "free" good, and this results in what many before you have argued are severe shortages of "vitally needed" legal services. In fact, both J. Michael McWilliams of the ABA and Martha Bergmark of the Project Advisory Group suggested in testimony before you May 13 that only 20 percent of the legal needs of the poor are currently being met. But as Mr. McWilliams states, the estimates are made on the assumption that these are "needs" requiring the services of lawyers, rather than wants which may be satisfied at a price and other alternatives compatible with the desires of the consumer and the service provider.

Under the current structure, the providers decide what and for whom such services are needed (at best a one-sided solution). The consumer of free legal services is arguably at the mercy of the attorney who will represent him if his "needs" coincide with those of the respective program or if his case represents an interesting problem which might bring the attorney acclaim among his peers. Consequently, many of the most desperate, who might otherwise choose alternatives if they were available under the law, go unserved.

Please do not misunderstand me. In addressing these structural problems, I am not singling out any particular programs as inferior or abusive. I have visited many programs and know firsthand the commitment among most LSC recipients. In migrant camps in New York, Michigan, and Florida; in the inner cities of Detroit, Boston, Charlotte, North Carolina, and the District of Columbia; on the streets of Harlem and in uptown New York; and in so many other places--lawyers, paralegals, and other support staff work hard to bring about careful, thoughtful attention to the very specific needs of individual clients. Such people are a blessing to the poor. These dedicated servants are due praise for making the most of a defective institutional setting. I am suggesting that we can and should expect more from the structure of the legal system which affects so acutely the individuals we seek to assist. As Robert S. Van Derzee wrote to the editors of Forbes in the June 1, 1987 issue: "In addition to the reduction of contingency fees and to charging the party bringing the frivolous legal action with the legal fees, why not permit paralegals to handle less complicated legal matters..."

To the ABA's credit, the Association has recognized the lack of competitiveness among bar members and para-professionals, and the shortages such entry barriers produce. In 1986 the ABA approved for distribution a report by its Commission on Professionalism which concluded that:

> ...it can no longer be claimed that lawyers have the exclusive possession of the esoteric knowledge required and are therefore the only ones able to advise clients on any matter concerning the law. Inroads to lawyer exclusivity have been made and will continue to be made. Lawyer resistance to such inroads for selfish reasons only brings discredit to the profession...innovative approaches to the distribution of legal services should not be stifled, but instead should be encouraged.

There are between 1.2 and 1.3 million cases handled annually by programs funded at least in part by the Legal Services Corporation. A high degree of specialization for these cases is not required. Almost 30 percent are in the family law area common to almost any general practice: divorce, separation, annulment, custody, visitation rights, spouse abuse and support. Housing cases constitute another 19 percent of legal services cases and less than 3 percent involve public housing. Medicaid and Medicare cases that affect the elderly poor represent less than 2 percent of our cases. Further, about one-third of our cases are closed with no more than brief advice being given. These statistics are not entirely conclusive. But, they do suggest that a broader array of people from all walks of life could be a part of the delivery of legal services.

Should barriers to entry confronting paraprofessionals be eliminated, a wide range of services predictably will emerge. The poor clearly would have greater access to dispute resolution services if these barriers could be dismantled. In fact, the entire market would be transformed, benefiting all consumers through greater price and service competition.

Suppose all one wanted to do all his or her life was to provide easier access for people to enforce their rights or to resolve landlord-tenant matters, or domestic or consumer claims. Such a person should not have to spend three years in law school, spend so many thousands of dollars to graduate and then pass comprehensive exams on subjects hardly related in order to provide basic services. Competent practitioners who wish to handle the simpler, less costly cases, cases most often handled for the poor, and the majority of people, are locked out. These people already exist throughout the country. Like Rose Palmer of Pittsburgh, Peggy Muse of Oregon and Rosemary Furman of Florida, they just want the opportunity to serve, to advocate for individuals without continual harassment from the bar.

In his testimony before you May 13, William Whitehurst argued vehemently against the current Board's budget recommendation to the Congress. But in calling for an $86 million increase, Mr. Whitehurst failed to address the reasons for advocate shortages and thus failed to provide justification for such a substantial increase in the budget. The solutions to the problems we face as the guardians of access to justice for the poor lie not in continually increasing public budgets, but in opening up access to markets which offer the poor the dignity of choice they deserve among alternatives .

To this end, I would like to present the Committee with a book entitled The Rule of Experts: Occupational Licensing in America, by S. David Young. Published by the CATO Institute here in Washington, the book provides an excellent overview of the deleterious effects, most notably among the poor, of professional licensure requirements in many occupations. In my forward to Young's book, I liken such licensing to domestic protectionism, which like all protectionism, ultimately harms the consumer, especially the least fortunate among us.

Aside from these more fundamental issues about the legal profession as a whole, recent history amply demonstrates that increased Congressional appropriations to LSC have not increased the number of lawyers and paralegals directly serving the poor. Rather, such appropriation increases have been absorbed by increases in personnel salaries and benefits costs within recipient programs. Furthermore, non-LSC funding of local legal services programs continues to grow dramatically. Finally, a recent review of grantee financial statements by the Corporation indicates that despite claims of a dearth of funds in legal services programs, LSC recipient programs reported fund balances of LSC-source funds totalling $15.5 million in 1986, or 5.6 percent of LSC grants for the year. Other non-LSC "liquid" fund balances totalled $34.6 million, bringing the public and private source funds carryover balances for the years 1985 and 1986 to an amount in excess of $50 million.

During the period of 1982 to 1985, Federal funding for the provision of legal services to the poor progressively increased. In 1982, the total budget allocations by LSC-funded field programs for attorneys and paralegals was under $113 million. By 1985, that figure had grown to over $160 million. But, during that period field programs chose to use those funding increases primarily to augment salaries and benefits for existing personnel. Many did not appear to try to expand their services by adding personnel or by adjusting the ratio of attorneys to paralegals. Thus, the number of program attorneys **decreased** from 4,907 in 1982 to 4,728 in 1985. The number of paralegals decreased from 2,052 in 1982 to 1,722 in 1985, causing the ratio of attorneys to paralegals to increase to 2.75 from its 1981 level of 2.34. The import of this relationship is that while the private sector and many programs funded by LSC are increasing paralegal usage in an effort to more efficiently and better serve clients, aggregate LSC data still indicate a disparity favoring attorney personnel.

In addition, there is no apparent relationship between increased funding and an increase in LSC grantee case closures. For example, a review of cases handled by grantees indicates that they handled approximately 50,000 more cases in 1983 than in 1984, with $30 million fewer dollars. Data for 1985 indicate an increase in case closures of over 800,000, with a budget increase of $30 million. Over the six year period for which data exist, however, no significant relationship can be identified.

As Linda Bernard, Director of Wayne County Legal Services, testified before the LSC Board in January, 1987, the Wayne County program in 1986 achieved its highest level of case openings and closures in its 20 year history. With the same level of funding as that received in 1985, Wayne County opened and closed "about 60 percent more" cases than they had as recently as 1984. The point here is what Ms. Bernard attributes as the key to her program's success. Among the many factors cited are the upgrading of staff and additional personnel; a great deal of secretarial and management training; the complete computerization of offices; the initiation of special projects, including the provision of a mobile unit for mediation projects. In her own words, over the last two years the Wayne County program has "attempted to exhibit in every conceivable way a more professional environment in a total law firm, if you will, a private law firm philosophy."

One of the most important areas in funding for legal services has developed from entities other than the Corporation itself. Outside funding for legal services programs rose dramatically from $47.8 million in FY 1982 to $106 million in FY 1985. Although final figures are not yet available, they are expected to demonstrate further growth for FY 1986. This growth in outside funding for legal services is expected to continue through FY 1988.

Perhaps the most significant factor in the continuing growth of outside funding to legal services programs has been the growth in Interest on Lawyers Trust Accounts (IOLTA) programs across the nation. IOLTA funds are generated from interest earned on pooled trust funds that are handled by private attorneys for their clients. IOLTA trust funds are comprised of the aggregate of amounts that are too small, or that are held for too short a period of time, to draw interest in excess of service charges if they were held in separate accounts. Typically, such funds are pooled in lawyers' unsegregated trust fund accounts, which accumulate interest that is then transferred to state bar associations, or other designated entities, for distribution as grants to legal services programs and other specified public interest causes.

IOLTA programs have grown very rapidly. At the beginning of FY 1983, only one IOLTA program was operational and had distributed just over $500,000 in grants. By the end of FY 1984, however, 15 states had approved IOLTA programs and eight of them had distributed a total of $4.8 million. These figures jumped in FY 1985 to 38 programs approved, with 15 states distributing $22.5 million. Currently, IOLTA programs established in 44 states have succeeded in reaching a level of $100 million in just six years.

Over LSC's twelve-year history, the Corporation's annual budget requests, and evaluations of it by outside interest groups, have been based on the abstract concept of "minimum access to justice." The minimum access concept was created by the Corporation itself in order to justify its repeated requests for increased appropriations from Congress. Minimum access is defined to be two full-time attorneys per 10,000 poor persons counted by the Census. But this criterion ensures neither the extent nor the quality of services available to the poor. Minimum access offers no mechanism with which the true needs of the poor can be defined. The lack of any such mechanism reinforces the lawyer's discretion to select cases according to his own preferences, as Alan Houseman suggests in a recent paper on the "History of Philosophy of Legal Services." The urgency of a client's legal needs, under minimum access, becomes a secondary issue. Moreover, the inherent presumptive refunding built into the minimum access concept insulates LSC recipients from systems of accountability necessary to ensure maximum efficiency in funds allocations. Finally, under minimum access an attorney's unwillingness to take a case has the potential of leaving the destitute client with zero options.

Mechanisms other than those which are dependent upon LSC funding currently provide poor persons with access to the judicial system and other dispute resolution services. These include:

(1) law school clinic programs;

(2) high volume, low-priced law clinics;

(3) ombudsman or similar offices of Federal, state and local benefits agencies;

(4) public interest law firms;

(5) lay legal manuals that reduce the need for a lawyer in routine matters.

Of the legal assistance resources available, certainly important are the pro bono legal services of private attorneys. Private bar pro bono participation, as reported by the American Bar Association in 1986, provides a very significant degree of legal services to the poor. The part-time participation rate is over 93,000 nationwide, which constitutes roughly 32 attorneys per 10,000 poor persons. As Eugene C. Thomas, the President of the ABA, testified before the House Appropriations Subcommittee on Commerce, Justice, State, The Judiciary and Related Agencies April 6, 1987, a recent survey shows that in Florida alone "private practitioners provided 699,000 hours of free legal services in 1986, conservatively valued at $35 million."

In addition to the many efforts on the part of the organized bar, the introduction of lawyer advertising in recent years has expanded markets to reach greater numbers of individuals. The benefits of reduced legal fees and increased service, which are generated by increased efficiency, reach the entire economic spectrum of consumers. Many of the services provided by the innovative, highly competitive, high volume legal clinic firms are in addition to those that are provided by LSC's grantees.

In a meeting with LSC staff members on January 29, 1986, Joel Hyatt, of the large and successful chain of legal clinics called Hyatt Legal Services, stated that:

> new developments are taking place that suggest that there are now delivery systems that are more efficient than those currently utilized by the government. I think we can provide more services for less money ... Moreover, I do think there are more opportunities in the private sector for aid to lower income individuals than there were 10 years ago.

These legal clinics do more than simply provide additional services. They allow the price mechanism to operate on behalf of clients, thus creating a tool with which the consumer exercises authority over the way in which the provider handles his or her individual case.

Recognizing the importance of such a tool, a client-eligible member of the LSC Board, Mrs. Lorain Miller, has suggested that LSC should introduce a system of co-payments in order to approximate market results. Under such a system, the client would pay a fraction of the cost of his or her legal service, with the precise amount of the fee depending on his or her income level. Mrs. Miller has suggested that such a system of co-payments, while recognizing the poor person's inability to pay for the full cost of the service, would increase consumer choice, thus enhancing the dignity of the indigent client. A system of co-payments also would tend to discourage frivolous litigation while not deterring meritorious actions. As Douglas Besharov, of the American Enterprise Institute, argued before the LSC Board, it is essential that LSC attorney actions be more closely linked to client needs, as determined by clients. The co-payment system provides such a link.

I have come before you today to discuss what I believe are the most important obstacles to the attainment of a truly accessible system of justice. Simply increasing the budget of the LSC without reforming laws which limit the economic freedoms of all citizens will not remedy the problem of access to justice for the poor. My proposal for reform of our UPL statutes recognizes the strengths of individuals and demonstrates a healthy respect for a broader vision for the delivery of legal services, given an appropriate institutional setting.

In the past, this LSC Board has attempted to provide such a setting through the introduction of competition, time keeping and other mechanisms to ensure accountability and to maximize the poor's access to our grantees. Congress, on many occasions has chosen not to agree with the Board's decisions and has denied these initiatives. As my colleague Mr. Wallace suggests, the LSC Board needs to be freed from restrictive legislative language accompanying the Corporation's appropriations bills. Restrictions on the allocation of funding, on reprogramming, and on the Corporation's authority to deny refunding under due process all deny the Board the power to allocate its resources in a manner consistent with the efficiency and fairness prescribed by the LSC Act. I am asking Congress to give us its support by sending a clear message that competitive grants, timekeeping, and most of all, reduced barriers to entry by non-attorneys, lie in keeping with its intent to maximze access to justice for all.

Thank you, Mr. Chairman. After the statements of Messrs. Wallace, Smegal, and Bayly, I will be happy to answer any questions you might have for me.

Senator RUDMAN. Let me just respond very briefly. I am well aware of your speech in New Orleans, and I believe I wrote you a rather lengthy letter in my response to it which we would categorize as anything but positive. I don't think that there is a shortage of lawyers in America. As a matter of fact, I think we may have too many in many ways.

The law schools are producing lawyers at a fairly record pace, and I am not particularly impressed with the caliber of some of the practice of law that I see, both sitting where I sit and being familiar with what goes on in my State.

I am not referring to Legal Services Corporation; I am talking generally. I don't think the problem would be particularly ameliorated by putting the kind of deregulation in place that we have discussed in this profession. I think the solution to that problem tends to be more with the structure of the courts and how we handle dispute resolutions.

Mr. DURANT. That is part of it.

Senator RUDMAN. I think much of that would go a long way to lessen the kinds of bottlenecks that poor people have in getting disputes resolved.

But I cannot share, and I don't know what others have to say. Within the practice of law, I think one has to be very careful about putting it in the hands of people who are not properly trained. I don't think paralegals, particularly, without adequate supervision, can do that kind of thing.

I basically agree with that position of yours. I think that the answer to legal services for the poor is a combination of what we do publicly through Legal Services Corporation and what the American Bar is trying to do privately. I would agree they ought to do more, but the very fact that they don't seem to over the years only gives more proof to the fact that we need more government participation, properly supervised.

When I came into this subcommittee in 1981, there were a whole series of, I think, outrageous things that were going on within LSC. Those were changed in a major way with a number of very serious changes in the way Congress did its oversight. I think that we have come to the point now where the Corporation ought to do well, assuming that the motivation of those who run it is to make it run well.

STATEMENT OF MICHAEL WALLACE

Mr. WALLACE. Mr. Chairman, I am Mike Wallace. As Chairman Durant has said, I am Chairman of our Operations and Regulations Committee. I am not here primarily to talk about the budget level. As a matter of fact, Chairman Durant is the only member of the Board here who voted for the budget level.

I am here to talk about the regulatory riders which appear on our regulation, and given the time that we have, I really don't plan to make an opening remark. You have had my remarks before, since May 4, and at the proper time, I am ready to answer any questions the subcommittee may have.

Senator RUDMAN. Fine.

[The prepared statement of Michael B. Wallace follows:]

PREPARED STATEMENT OF MICHAEL B. WALLACE

CHAIRMAN

COMMITTEE ON OPERATIONS AND REGULATIONS

BOARD OF DIRECTORS

LEGAL SERVICES CORPORATION

Good afternoon, Mr. Chairman, Senator Rudman, and members of the Subcommittee. I am Michael B. Wallace. I am a partner with the law firm of Phelps, Dunbar, Marks, Claveric, and Sims of Jackson, Mississippi. I serve as a Member of the Board of Directors of the Legal Services Corporation (LSC), and as the Chairman of its Committee on Operations and Regulations.

Mr. Chairman, I will focus my testimony on the Corporation's three requested modifications of the legislative language that accompanied LSC's FY 1987 appropriation. All three of these proposed changes are set forth in the formal budget request document that was submitted to Congress by the Corporation on February 6, 1987.

First, the funding allocation formula and mandated funding levels for the programs and activities of the Legal Services Corporation that accompanied the FY 1987 appropriation should not be included in any legislative language accompanying the FY 1988 appropriation. I address this issue in my capacity as a member of the Committee on Audit and Appropriations of the Board of Directors.

It was the intention of Congress when it created the Legal Services Corporation in 1974 to establish a politically independent organization, overseen by a Board of Directors not subject to the control of the Executive or Legislative Branches, that would allocate its Federal funding to local legal assistance providers in a manner that is consistent with the best interests of the poor. In this era of scarce Federal funding, the Board of Directors of the Corporation must do all that it can to assure the greatest possible cost-efficiency and effectiveness on the part of its grantee programs. The LSC Board's ability to discharge this paramount responsibility is impaired, however, by the legislative language attached to its FY 1987 appropriation establishing a strict funding formula and mandated funding levels for the Corporation's programs and activities.

Mr. Chairman, let me take a moment to review the history of this particular restriction on the power of the LSC Board. The fundamental disagreement between the Reagan Administration and the Senate over the future of the Federal legal services program resulted in a stalemate over confirmation of President Reagan's several sets of nominees to the LSC Board between 1981 and 1985. During this period of stalemate, a series of recess-appointed Boards served at LSC. And from FY 1983 through FY 1985, Congress restricted the power of the unconfirmed LSC Board by means of the so-called "affirmative rider," which required the Corporation to distribute funds to its grantees in the same proportion as in the previous fiscal year until contrary allocations were made by a confirmed Board of Directors.

In the Senate floor discussion of the LSC appropriation for FY 1985, Senator Hatch commented on the "affirmative rider" by stating, "My concern is that the confirmed board ... will have the freedom to make the funding decisions that previous boards have made. I believe they will make adequate and good decisions." 98 Cong. Rec. S8587 (June 28, 1984). Following Senator Hatch's remark, there was a brief discussion in which Senators Rudman, Hatch, and Helms reviewed the stalemate over confirmation of the President's nominees to the LSC Board. Senator Rudman observed:

> Nobody would be more pleased than the Senator from New Hampshire to see this board confirmed and let them run the Legal Services Corporation. ...[T]he Senator from North Carolina is precisely correct in what he said about this being legislation on an appropriations bill. But there are times in life when you have to do the practical thing. Were we not to put language in this appropriations bill we would have an uncontrolled situation in the Legal Services Corporation. Hopefully we can get these 9 or 11 people confirmed and be off to something more important. Id.

All eleven of the President's nominees to the LSC Board of Directors were confirmed by the Senate on June 12, 1985. The record on this matter reflects a recognition on the part of the Senate that the LSC Board, once confirmed, was to be entrusted with the full funding allocation powers and responsibilities established by the Legal Services Corporation Act, as amended. The legislative language accompanying the FY 1987 appropriation to the Corporation that mandates a funding allocation formula, and mandates particular funding levels for LSC programs and activities, is inconsistent with the LSC Act because it deprives the Board of the power to allocate the Corporation's scarce Federal funding to the most efficient local legal services providers in a manner that is fair and equitable, and best serves the poor. Let me assure you, Mr. Chairman, that the Legal Services Corporation Board of Directors stands ready to discharge its duties and responsibilities in this regard, in a manner fully consistent with the letter and spirit of the LSC Act, just as soon as its full statutory authority to do so is restored by the Congress. I should add that our exercise of our judgment will be based on a greater body of information than was available to any previous Board. Whatever the flaws of our monitoring process, there can be no doubt that this Board takes seriously its oversight of the recipients of the taxpayers' money.

Mr. Chairman, the second recommendation of the Corporation with regard to any legislative language accompanying its FY 1988 appropriation is that the reprogramming requirement for duly promulgated regulations should not be continued. I address this issue in my capacity as the Chairman of the Committee on Operations and Regulations of the LSC Board of Directors.

The reprogramming requirement for all LSC Board-promulgated regulations was included for the first time in the legislative language accompanying the Corporation's FY 1985 appropriation. Its primary purpose was to force the Corporation to reconsider six regulations that were promulgated by an unconfirmed LSC Board prior to April 1984. Perhaps the most notable among these was the administrative and legislative ("lobbying") regulation. When asked by Senator Hatch to explain the effects of this provision during a discussion on the Senate floor in 1984, Senator Rudman stated that it was his hope that the reprogramming requirement would be "a one time action and that it will not be necessary to include the provision in the fiscal year 1986 appropriations bill." 98 Cong. Rec. S8588 (June 28, 1984).

As a result of this reprogramming requirement, all six of these regulations have been republished for comment. The Board has reviewed carefully all comments and has agreed to certain significant changes in the regulations involved. All six amended regulations have been reprogrammed and, with the exception thus far of the lobbying regulation, have been accepted by both the Senate and House Appropriations Committees. Moreover, two other regulations, on questioned costs and denial of refunding, have also been approved.

One of the primary statutory responsibilities of the Board of Directors is to promulgate such regulations as are necessary to implement the will of the people as expressed by the Legal Services Corporation Act. The reprogramming requirement for regulations not only unnecessarily restricts this statutory responsibility, but it undermines the overall political independence of the Corporation. That independence, of course, is not inconsistent with a healthy respect for the opinions of current Members of Congress, as the record of approval for most of our regulations will attest. The Act requires us to exercise our independent judgment through notice and comment on the public record. As Chairman, I have always solicited the views of Members of Congress as a part of that process, and I have a file of letters from Members urging us to take diametrically opposite actions. Having fully considered those views in the adoption of regulations, we are placed in an utterly untenable position when the Appropriations Committees tell us, after the completion of the process, not to enforce those regulations. Should Congress disagree with our discharge of the authority delegated to us, then it should act by legislation, as the 99th Congress quite properly did with regard to the lobbying regulation.

I speak for myself and not for the Board when I say that I fully support the legislative veto and that the Supreme Court made a dreadful mistake in the Chadha decision. I believe that Congress should act to recover its legislative authority and that no regulations of any agency should take effect until enacted pursuant to Article I. In the meantime, however, those of us to whom legislative authority has been delegated are obligated by our oaths to be guided by our best judgment in our application of the authorizing statute. I promised the Senate in 1983 that neither the President nor Members of Congress would unduly influence my judgment, and I have kept that promise.

Finally, Mr. Chairman, I turn to the Corporation's third suggestion, which is that legislative language requiring a full hearing before an independent hearing examiner, in all denial-of-refunding proceedings involving LSC grantees, also should not be renewed. The current legislative language accompanying LSC's appropriation retains the requirement for a full hearing before an independent hearing examiner that is set forth in Section 1011 of the LSC Act, and specifies that the burden of proof shall be placed upon the grantee.

Operating under Section 1011 procedural requirements, as modified by the current appropriations rider, causes a tremendous drain upon LSC's valuable financial and staff resources. In fact, the costs involved are so great that LSC has attempted to deny refunding fewer than ten times since 1977. Presumptive refunding has the practical effect of locking programs into LSC grants despite inefficient performance. And the expense of currently mandated procedures allows the Corporation to deny refunding only in the most egregious cases of mismanagement or wrongdoing.

The need for further modification of LSC's denial-of-refunding procedure has been recognized in Congress for several years. A provision of H.R. 3480, which was passed by the House of Representatives in 1981, would have required the Corporation simply to notify a grantee prior to denying its application for refunding and to provide temporary funding until the grantee's pending work was completed. A provision of H.R. 2909, which was approved by the House Judiciary Committee in 1983, added a fair hearing requirement to the H.R. 3480 procedure, but did not provide for a "full" hearing before an independent hearing examiner. Speaking in favor of the 1981 measure on the House floor, Representative Kastenmeier, who is Chairman of the House Judiciary Committee subcommittee with jurisdiction over LSC, stated:

> This change will allow the Corporation to move with greater speed when it determines that a particular recipient should not be refunded because selection of another provider would best fulfill the purposes of the Act and provide the most economic and effective delivery of legal assistance. 97 Cong. Rec. H2969-70 (June 16, 1981).

Almost exactly one year ago, Senators Rudman and Hatch introduced S. 2409, a bill to reauthorize LSC. S. 2409 would have repealed Section 1011 of the LSC Act and replaced it with a provision requiring that "[a]n application for refunding shall not be denied unless the recipient has been afforded reasonable notice and an opportunity to show cause why such action should not be taken." In its formal FY 1988 budget request to Congress, LSC has proposed that legislative language accompanying its appropriation should include a denial-of-refunding procedure that is identical to that which was included in S. 2409. If such language is approved by Congress, LSC will establish a "show cause" procedure that is fair and timely, and which avoids disruption of service. With regard to the termination or suspension of a grant -- actions that, by definition, take place during a grant year -- LSC would continue to be bound by the requirements of Section 1011.

The Corporation believes that this necessary reform may be accomplished by an appropriations rider. My own view is that it would be more appropriate to amend the Act through the authorization process. However Congress chooses to act, LSC's recommendation on changing its denial-of-refunding procedure thus represents a compromise between the various proposals that have been introduced and, in some cases, adopted in recent years. I am confident that it would satisfy notions of due process, while at the same time better enabling LSC to ensure the greatest possible cost-efficiency and effectiveness on the part of its grantee programs.

Thank you, Mr. Chairman and Senator Rudman, for this opportunity to present LSC's views regarding the legislative language that will accompany its FY 1988 appropriation. I would be pleased to answer any questions that you may have for me.

STATEMENT OF THOMAS SMEGAL

Mr. SMEGAL. Senator Rudman, Senator Chiles, I am a attorney in private practice in San Francisco, and I am a Member of the Board of Directors of Legal Services Corporation.

In fiscal year 1985, a bipartisan Congress, at the recommendation of our predecessor Board of four persons increased the LSC funding by over 10 percent from fiscal year 1984 to $305 million.

Since that time, for the third consecutive year, each time by a diminishing majority, the Senate-confirmed Legal Services Corporation Board again recommends a continued freeze at the $305 million level.

Speaking for a slim 6-5 majority on your counterpart committee in the House, Chairman Mendez argued that a funding freeze is essential to a "Federal budget deficit, in the crisis of unprecedented dimensions." Thus, rather than demonstrating a leadership role for the legal needs of the indigent, the six-person majority would exercise overall political judgment normally reserved for the Congress.

LSC PROGRAM BUDGET

The Legal Services program is not the key to a balanced Federal budget. The budget request purports to be nearly a freeze. It is an actual proposed reduction in real dollars, but it represents a budget reduction of $66 million in funding of the staff field programs, those responsible for delivering legal services to the indigent to be used for management and administration. In contrast, this 2-percent reduction in field funding would be counter-balanced by the majority providing a COLA increase in salaries for our headquarters staff.

There is only one ever-diminishing sack of money. When funds are moved, they are gone. The only way that this program can continue at its presently significant reduced operating level is to increase funding.

BUDGET RECOMMENDATIONS

A five-person Board minority recommends $325 million. Our predecessor four-member Board in 1981 recommended $321 million. The ABA recommends $360 million. Other elements of the organized bar recommended $391 million. Whatever this committee deems appropriate as an increase, it is critical that there be an increase, critical to those who deliver legal services to the indigent and critical to this whole Federal program.

While the minimum access standard, two lawyers for every 10,000 poor, was only reached momentarily in 1982 with the $321 million funding level, even a cost-of-living increase of $325 million will be a clear signal from a bipartisan Congress of the on-going support that remains for LSC staff lawyers.

The Board majority provides no such signal. With the freeze of the budget, requests were devoid of even one laudatory comment of the overwhelming definitiveness of the 324 programs in the delivery of legal services, a record of hostile monitoring activity, motivated only by a desire to defund programs; silence in the face of unwarranted and inaccurate attacks by editorial critics, and a Board Chair who has publicly called for the abolishment or undefined replacement of the Legal Services Corporation while at the same time proposing, as you now heard him say again, the duration of the legal profession.

PRO BONO SERVICES

As you have heard from responsible members of the Bar, there have been and continue to be an evergrowing number willing to contribute pro bono services. Lawyers' client trust accounts are bearing interest that is being contributed to Legal Services programs.

In my State of California alone, this year we will see a distribution of about $15 million of such funding. Yet these sources of Legal Services are merely the flesh on a critical underlying skeleton of Federal programs to which I was nominated by the President and confirmed by this Senate several years ago.

The Legal Services Corporation needs a transfusion, a transfusion of Federal funds to demonstrate to the programs the support that is available from the ABA, available from the local bars. It needs that transfusion in fiscal year 1988 in the form of an increased Federal funding.

In my prepared remarks, I touch briefly on the three proposals advanced in the Legal Services Corporation fiscal year 1988 budget request for statutory language changes. They are advanced without a Board vote or without public discussion, as well the ill-advanced remarks of our Chairman, Mr. Durant, at the ABA in February. They do not reflect my views.

Senator Rudman and Senator Chiles, I thank you for the opportunity to be here. I am prepared to answer any questions. I particularly appreciate your support for this program. It has certainly been an honor for me to serve on it.

Senator RUDMAN. I thank you for coming all the way from California. We felt since there was a divergence of views that both sides ought to be heard.

[The prepared statement of Thomas F. Smegal follows:]

PREPARED STATEMENT OF THOMAS F. SMEGAL, JR.

MEMBER

BOARD OF DIRECTORS

LEGAL SERVICES CORPORATION

Mr. Chairman and Members of the Subcommittee: I am Thomas F. Smegal, Jr., an attorney in private practice with Townsend and Townsend in San Francisco, California, and a member of the Board of Directors of the Legal Services Corporation (LSC), where I serve on each Board committee, including the Committee on Audit and Appropriations. I am here at the invitation of the ranking members of your Committee to present testimony on the Corporation's Budget Request for FY 1988 of $305 million.

I understand that you have had an opportunity to receive the valued counsel of J. Michael McWilliams, Chair of the House of Delegates of the American Bar Association, and William Whitehurst, President of the State Bar of Texas. You also have had the benefit of hearing from a representative of the Project Advisory Group, speaking for those lawyers who are involved in the day-to-day delivery of civil legal services to the indigent through this vital federally-funded program.

As those responsible segments of our constituency have advised you, maintaining the LSC budget at $305 million for still another year will continue to accelerate the devastating erosion of the effectiveness of this program in carrying out its mandate to deliver legal services to the indigent. They are not alone in that view. For example, in 1983, our predecessor Board of four persons authored a Request for an LSC appropriation of over $325 million, which by their own description, represented "an 18% increase over LSC's FY 1984 budget and a 35% increase over FY 1983". In response to that Budget Request, a bipartisan Congress recognized the critical need for additional Federal funding and set the LSC funding level for FY 1985 at $305 million. This was more than a 10% increase over the prior year funding level of $275 million. For reasons hereinafter described in greater detail, the funding level remained frozen at $305 million in both FY 1986 and FY 1987. A bare majority of the LSC Board has now recommended that you continue the freeze for FY 1988.

FY 1986

In December 1984, during our first public meeting following our recess-appointments in November 1984, the Board was advised that one of our immediate responsibilities was to develop a budget request for FY 1986. Over the objection of three Board members, including myself, a majority voted to submit a budget request for FY 1986 frozen at the $305 million level to which LSC funding had been raised by Congress for FY 1985. Among the reasons stated by those supporting that budget request were a concern that we had insufficient information, as new Board members, from which to determine whether the prior years' funding levels were appropriate for the functions then being performed by the LSC.

FY 1987

In December 1985, after having served for an additional full year as Board members, and six months after being confirmed by the U.S. Senate, we were confronted with the responsibility of determining an appropriate budget request -- this time for FY 1987. The majority of the Board again submitted a budget request of Congress frozen at $305 million. Having lost motions for meaningful Budget increases, four of us argued for at least a modest, cost-of-living increase from that funding level. We were outvoted by a Board majority of seven, who contended that the overall Federal budget deficit crisis required that the Board maintain the freeze level for the FY 1987 appropriation request. Additionally, it was asserted by those Board members supporting a continued funding freeze, that even after serving another year on the Board of Directors, they still did not have sufficient information from which to recommend a funding level different from that first authorized by Congress for FY 1985.

FY 1988

We are now again to that time of year when the LSC Board of Directors submits its budget request to your Committee -- this time for FY 1988. By a vote of 6-5, the Board majority again requests that the LSC budget remain frozen at the level first provided for FY 1985, prior to the commencement of our service as Directors of the LSC. The reasons given by those in the shrinking, now bare majority, continue to focus upon an overall "Federal budget deficit crisis of unprecedented dimensions," to quote from the prepared remarks of Board member, Pepe J. Mendez, delivered to your counterpart subcommittee in the United States House of Representatives on March 25, 1987.

I have argued to an unresponsive majority for over two years, that the Board should be demonstrating its leadership by presenting the legal needs of the indigent to the Congress, not by exercising the kind of political judgment reserved for the Congress in evaluating the national deficit. Yet the majority of my fellow Board members apparently assume this program, in and of itself, is the key to a balanced Federal Budget.

During the initial deliberations on the FY 1988 budget mark at the January 29, 1987 public meeting of our Committee on Audit and Appropriations, chaired by Mr. Mendez, I proposed that LSC set its budget request for FY 1988 at $325 million. Among the reasons that I advanced to justify such a modest 6% increase over FY 1985, FY 1986 and FY 1987 funding levels were (1) inflation since FY 1985, when the budget mark of $305 million was first provided by a bipartisan Congress; (2) the desire of the Board majority to provide our Washington headquarters staff with an immediate cost-of-living raise, even though essentially none of them were employed as long as two years ago (FY 1985); and (3) a staff recommendation that the budget for management and administration of the program itself be increased even further above the authorized FY 1985 level.*

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*Management and administration comprised less than $6 million of the FY 1985 funding of $305 million, as compared to FY 1988 where management and administration are proposed to be allocated $12.2 million out of the same $305 million funding request.

I emphasized that to continue a funding level as first provided in FY 1985, was not a freeze in Federal funding, but was a significant decrease in the amount of "real" dollars available for the delivery of legal services to the indigent. Other Board members, who also supported an increase, refined these arguments through their own perception of an appropriate and necessary funding level for the LSC. The ultimate result of that public debate of the budget request for FY 1988 of $325 million, was its approval by a 4-3 vote of the Audit and Appropriations Committee, with Chairman Mendez voting in the negative.

The matter of the budget request for FY 1988 next was discussed at the full Board meeting on January 30. Mr. Mendez advised the full Board that the Audit and Appropriations Committee recommended that LSC request a FY 1988 funding level of $325 million. However, without there being an orderly process wherein those who had made the motion (and supported its passage at the Audit and Appropriations Committee) were allowed to explain their recommendation, Board Chairman Durant recognized Committee Chairman Mendez for the purpose of substituting a budget request of $305 million for FY 1988 -- to thereby continue the funding freeze at the FY 1985, 1986 and 1987 levels. In spite of the manner in which the discussion was orchestrated, five of the eleven Board members voted against the freeze level request for FY 1988 funding for the LSC.

The FY 1988 Budget submitted by six LSC Board members does not represent a mere "freeze" of the funding at the FY 1985 level, but represents a $6 million reduction in field program funding from FY 1987 alone. This reduction would result from a proposed $4.8 million increase in management and administration, as well as the diversion of several additional millions to budget lines not directly involved in the delivery of legal services through currently funded field programs.

The Corporation Budget Request for FY 1988 provides no justification for $12.2 million for management and administration. Although page 32 includes a table indicating an estimate of 222 staff personnel for 1987 and 1988, in reality the permanent staff has not exceeded 150 for several years and is presently below 125. While the Board has not been provided with interim accounting reports of expenditures for over six months, there can be little doubt that the FY 1987 funding provided for 222 staff has not been spent on less than 150 staff. As Senator Rudman was able to determine last year, the carry-over from FY 1986 exceeded $5 million. A substantial carry-over would again appear to be available for FY 1988.

There may have been some justification, when the Board commenced its duties and responsibilities as recess appointments, to feel insufficiently knowledgeable to develop an independent budget request for FY 1986. However, after more than two years of extensive public hearings (a period during which essentially the entire Washington headquarters officers and staff were replaced by those more acceptable to the Board majority), that excuse can no longer carry the day.

For example, during the last two years, we have received public testimony from hundreds of lawyers, directly or indirectly involved in delivering legal services through the field programs and the National and State Support Centers. Without significant exception, these lawyers were articulate and well reasoned in their presentations. We have also had the benefit of counsel and guidance from distinguished members of the organized Bar, including past Presidents of the American Bar Association. What they have been telling the Board is that those who deliver civil legal services to the indigent deserve our unwavering support and encouragement.

One would think that those nominated for, and confirmed to service on the Board of Directors of the LSC would be little troubled in supporting and encouraging the thousands of dedicated full-time staff lawyers in their delivery of legal services to the indigent. Yet a detailed review of the Corporation's FY 1988 Budget Request fails to reveal even one laudatory comment about the programs we administer. Furthermore, factually inaccurate and misleading editorials have gone unanswered by the Board Chair and/or the Corporation staff. Even our predecessor Board, appointed during a Senate recess, were more supportive of the LSC program, as demonstrated by their $325 million FY 1985 Budget Request.

It is suggested in the FY 1988 Budget Request that outside sources of funding for legal services have risen dramatically since Federal funding was reduced by 25% in 1982. As you have heard in greater detail from distinguished lawyers from across the country, sources of outside funding continue to be developed at state and local levels to expand the impact of the greatly decreased Federal funding of the LSC.

American Bar Association President Eugene Thomas has recently reported that in 1986 more than 85,000 ABA members volunteered pro bono services to the indigent in civil matters. That number increases daily. I recall when I was President of the Bar Association of San Francisco in 1979, that over 500 of our members were involved in our local pro bono program. Since that time, the number has grown to over 1200. The willingness of more lawyers to serve the indigent without compensation, has grown as well throughout the country. However, such pro bono programs were never intended to be, nor can they possibly fully serve the well documented needs of greater numbers of indigents who deserve equal access to justice.

Outside funding has also increased in a desperate effort to minimize the destruction caused by that devastating 1982 Budget reduction of $80 million. The LSC Budget Request suggests that funding from outside sources has increased from $47.8 million (1982) to $106 million (1985). Assuming that is correct, almost 3/4 of the 1982 reduction in Federal funding may have been gradually replaced by outside funding sources in the succeeding three years. Unfortunately, the need for legal services has not remained static at 1981 levels, in that the number of eligible indigent clients continues to increase each year. For example, surveys indicate that, in 1981, there were 31,822,000 individuals below the poverty level in contrast to 1985, where the number had risen to 33,100,000.

Unless the Federal LSC program is allowed to resume a responsible growth in an organized and orderly way, through increases in Federal funding levels as provided in FY 1981, the framework of a well-functioning national program will be unavailable for expansion through pro bono programs and supplemental outside funding such as Interest on Lawyers Trust Accounts (IOLTA). The result will be further dismantling of programs that have demonstrated, some through over two decades of legal service delivery, that they are effective mechanisms by which legal services can be provided to indigents.

In 1975, when the "minimum access" standard was determined as the funding level to support two lawyers for each 10,000 poor people throughout the country, LSC staff lawyer salaries then averaged about $12,000. Since 1975, lawyer salaries, as well as salaries of other human resources in our society, have risen substantially. Merely adjusting of LSC staff lawyer salaries to reflect 114% inflation since 1975, would result in an average salary of $26,000 in FY 1988. In contrast, starting salaries to be paid this fall to law graduates in the major cities of our country will greatly exceed $60,000. Thus, the average starting salary presently being paid legal service staff lawyers is insignificant per se, as well as in terms of the benefit provided when such dedicated full-time lawyers deliver civil legal services to the indigent. Yet a bare majority of the Board proposes to raise Washington staff salaries while strongly urging Congress to decrease "real dollar" funding to programs employing such lawyers in FY 1988.

While you have been provided with information as to how minimum access could again be restored, the amount of Federal funding required to provide even that meager amount of legal support appears to be far beyond what is attainable in FY 1988. As the ranking minority member of this Committee has so ably stated, the alternative proposed by our Board Chairman -- that the legal profession be deregulated so that anyone can practice law -- is so absurd that it does not justify serious consideration.

What does require "serious consideration" is that a clear signal be given to those thousands of lawyers who continue to devote their professional skills in providing legal services to the indigent. Increased Federal funding would represent such an unequivocal statement, i.e., that a bipartisan Congress understands the importance of what they are doing and is prepared to speak out on their behalf. Unfortunately, the majority of this Board is unable to do so. Nevertheless, five members of the Board have publicly stated their belief that such a signal can be provided with a funding level of $325 million for FY 1988.

There is compelling evidence to support both the ABA funding recommendation of $360 million and the PAG funding recommendation of $391 million. However, I urge you to favorably consider at least the $325 million recommended by five members of the current LSC Board, as a minimum funding level, to provide the kind of encouragement needed to rekindle some of the momentum that the LSC Act was intended to foster, when it was created through a bipartisan Congressional effort in 1974.

Aside from the Corporation's inadequate funding request of $305 million, and the insult inherent in the lack of praise for any of the programs being funded, there are several unrealistic proposals presented in the document submitted to Congress. I refer in particular to pages 14-22 of the Budget Request, calling for three modifications of existing legislative language. The first involves the recommendation that the funding formula and designated funding levels for field program activities be removed from the legislative language. The second is that the reprogramming provisions included with statutory FY 1987 funding levels, be removed from legislative language accompanying the FY 1988 appropriation. Finally, the Budget Request contains a recommendation to remove the requirements that the LSC provide a full hearing in front of an independent hearing examiner, preliminary to a denial of an application for refunding.

None of these recommendations are the result of Board vote, nor have any of them been the subject of Board public discussions. With respect to the first of the foregoing requests, on June 28, 1986, a bare majority (6) of the Board voted to defund National and State Support Centers, necessitating that Congress include legislative language for FY 1987 that mandated continued funding of these vital program components. Such a recent example of irresponsible conduct, in defiance of unwavering bipartisan Congressional support, amply illustrates that to return such power to this Board, whose Chairman has called for the abolishment of the Corporation itself along with deregulation of the legal profession, would not be prudent.

With respect to the request that the present reprogramming provisions also be removed from FY 1988 legislative language, even the FY 1988 Budget Request illustrates that, were it not for such language, six regulations promulgated by an unconfirmed LSC Board prior to April 1984, would still remain in place, creating burdens upon legal service delivery components greatly in excess of that intended by Congress through the passage of the LSC Act. The irresponsibility of the present Board with respect to reprogramming was amply illustrated at our second public meeting, on December 20, 1984, when my motion to suspend these regulations, during a further obviously necessary period for public comment, was defeated by a Board vote of 8-3.

Regarding the recommendation that the requirement for a full hearing prior to denial of field program refunding be eliminated, the Budget Request alleges that the fewer than ten Corporation attempts to deny refunding since 1977 are the result of onerous procedural requirements.

Yet during the six year period from 1976-1982, 22 programs were defunded under the procedures then available to the Corporation -- procedures that have since then been improved to simplify denial of refunding. The answer lies not in further modifying existing procedures for denying refunding, but in establishing appropriate instances where a denial of refunding is proper. The inability of the Corporation to provide sufficient evidence to defund programs lies with the deficiency of a factual basis to support program defunding, rather than in the presently available process.

Thank you for allowing me the opportunity to present my views, as a member of the LSC Board of Directors. On a personal note, I am particularly grateful for the overwhelming, bipartisan support that I have received from Senator Hollings and Senator Rudman. It has made my service as a Board member a most rewarding experience.

I am prepared to respond to whatever questions that you may feel appropriate.

STATEMENT OF JOHN BAYLY, JR.

Mr. BAYLY. Thank you, Mr. Chairman.

My name is John Bayly. I am the President of the Legal Services Corporation. May I take just a second to pledge to you, as I have pledged to members of our Board, that the staff of the Legal Services Corporation and I will do our very best to see to it that money appropriated by this Congress will be spent effectively and efficiently for provision of legal services to needy members of our community.

I will be happy, sir, to answer any questions that you or Senator Chiles may have.

Senator RUDMAN. Senator Chiles, do you have an opening statement?

Senator CHILES. No, thank you.

REDUCTION IN DELIVERY OF LEGAL ASSISTANCE

Senator RUDMAN. I have a number of questions to ask.

I am a little puzzled by the reduction in delivery of legal assistance by about $4.8 million, bringing it from 280 down to 275, and increasing the corporate management and grant administration, by my calculations, around 40 percent by about $7.4 million to about $12.2 million. Give or take a few percentage points it doesn't make any sense. Who would like to comment on that?

Mr. DURANT. I will offer a general comment.

Senator RUDMAN. It doesn't compute. We don't understand this.

Mr. DURANT. As a general proposition, there was, by this Congress, a requirement of us to review the Corporation to use its carryover to make up the difference that was appropriated, $7.6, and the carryover was about $3.5, as I recall.

The change, simply, the increase that went to the field in that one particular year and now is adjusted, is a result of bringing the administration back to its current levels, is why there is that real major difference in those budget figures.

Senator RUDMAN. Won't there be a carryover this year?

Mr. DURANT. I understand from Mr. Bayly it will not be significant.

Mr. BAYLY. It will be considerably less, Senator. The difference between last year's management and administration, including the carryover and what we have requested, is closer to 7 or 8 percent of an increase.

We do not expect that we will have that same amount of carryover this year. In fact, we expect to have considerably less. I can't tell you precisely how much, but I can tell you with some assurance that it will be one-fourth or one-fifth as much as it was in the previous year.

Mr. DURANT. Some figures that Mr. Bayly gave me last week, the percentage of management administration in relation to the overall budget from 1982, which was 4.5; in 1983, it was 3.8; in 1984 it was 4.1 percent and in 1985 it was 3.6, that it has not been an explosion in terms of overhead, even though they are asking for monitoring.

Senator RUDMAN. I am going to submit to you an expanded question on that and some other what I would call detailed budget questions for the record. How long do you need to get those back for the record?

Mr. BAYLY. We can provide them forthwith, Senator.

Senator RUDMAN. How about 10 days?

Mr. BAYLY. I am sure that is fine.

Mr. SMEGAL. I would like to say, Senator, I have a document here reflecting the first 6 months of the Corporation. I noted that of the $11.6 million that was allocated for management and administration, $4.5 has been expended in the first 6 months, leaving $7 million for the last 6 months. There appears to be, if we continue to operate as we have, there will be at least a $2.5 million carryover.

There may be something I am not aware of that would affect that.

Senator RUDMAN. Would you respond to that?

Mr. BAYLY. Yes, sir. A great deal, portion of, I think, what Mr. Smegal is referring to we fully expect to be pledged and committed within the next few months to our voucher and contract model programs which are going to be instituted, we think, in three to four to five other sites throughout the country. That will consume most all of that additional money.

ADDITIONAL FUNDING REQUIREMENTS

Senator RUDMAN. Has there been any analysis done in the last 6 or 8 months as to what the needs are for additional funding for the field programs, assuming that you have money available? Has any survey been done of your various field operations to see what the needs are out there?

Mr. BAYLY. Well, Senator, we receive information from time to time through our Office of Field Services as well as from our monitoring ventures. We have, as well, a long series of correspondence from programs, but I cannot say to you, sir, that we have asked the field programs where their most critical needs are or what percentage of an increase that they would like. PAG, of course, has submitted a number of remarks, and they have indicated where they feel that the increases should be placed and why.

Senator RUDMAN. Your budget justification, I must say, again, lacks a lot of detail. I am going to have to ask some questions here. We have a lot of unanswered questions as to how you plan to use the funds. I want to get that on the record here.

We talked about this last year. You were not here, Mr. Bayley, but I believe, Mr. Durant, that you were here last year. I thought we might see some more specificity in this year's submission. We didn't get it.

So let me just ask you a few questions for the record. I guess you ought to answer them in behalf of the Board. Mr. Smegal, if you disagree, you speak up.

Mr. SMEGAL. All right.

Senator RUDMAN. I want to know what the situation is over there.

MIGRANT PROGRAMS AND SUPPORT CENTERS

Have you taken a position on the Board about funding migrant programs or the State and National Support Centers in this fiscal year 1988 budget? Does the Board have a position?

Mr. DURANT. In the budget request, we, as you know, last year had submitted a proposal to which we would allow the field programs the opportunity to make choices——

Senator RUDMAN. I know.

Mr. DURANT [continuing]. On a competitive basis or any way they wished to provide services.

Senator RUDMAN. Right.

Mr. DURANT. The Congress chose not to agree with that reform, and so until we make other choices or other evaluations, the funding will remain constant.

Senator RUDMAN. When do you expect some of the decisions might be made in terms of that? You have that in your submission that you may change some of that at a later date.

Mr. BAYLY. Excuse me; $9 million for migrant programs.

Mr. DURANT. Yes, there is a figure of $9.6 million for migrant programs.

Senator RUDMAN. How about training?

Mr. DURANT. And $15 million for support.

TRAINING AND TECHNICAL ASSISTANCE

Senator RUDMAN. All right. How about specific activities during fiscal year 1988 for training and technical assistance?

Mr. DURANT. I would ask Mr. Bayly to address how the Training Task Force—its report is, I think, completed on the work that they have been doing specifically for training.

Mr. BAYLY. Senator, at the next Board meeting, which is now scheduled for late June, I expect the Corporation will have a report on the regional training centers and training and technical assistance.

We might note that, if you have the opportunity to glance at our budget, that we requested the same amount of money that was requested and appropriated in 1987. That is, in large portion, because of this rather lengthy report that we have had on-going. I am happy to provide the Committee with whatever information I can, but as I say, that report is scheduled for presentation to the Board of the Corporation at its June 25 and 26 meeting.

Senator RUDMAN. I would like that supplied for the record when it is available.

Mr. BAYLY. Yes, sir.

Mr. SMEGAL. Mr. Chairman, if I may add a footnote to this, first of all, let me say that I have great confidence in Mr. Bayly. I am very much impressed with the manner in which he has performed as President. In my view, he inherited a rat's nest. In the first 6 months of the current fiscal year, training development and technical assistance have involved the expenditure of zero funds. The allocation of the three-quarters of $1 million remains. None of it has been used.

Senator RUDMAN. We are aware of that. That is why I asked the question. I appreciate your comment.

We had a terrible go-around last year on some computer purchases. GAO found that the Corporation didn't comply with reprogramming provisions of the 1985 and 1986 Act. I won't go into all the legal details of what they said, but it was obviously right, and whether it was right or wrong, it is binding as far as we are concerned and as far as you are concerned.

We try to base our decisions on the kind of budget justification documents we get, and I must say that we have kind of a double-edged sword here when you present this to us, because I think there is some conflict in presenting a budget to us that is devoid of a lot of programmatic detail. At the same time, you ask to be relieved of specific earmarks and reprogramming requirements.

We can't deal that way, and in developing our final mark, you ought to be aware of the fact that Congress, for all agencies, does get a lot more detail, and you have just not, again, submitted it to us.

REPROGRAMMING REQUIREMENTS

It seems to us, at least, that there is a conflict there that if you really want to do some things, you ought to be up front with us and tell us what it is you want to do. The chances are you are not going to get reprogramming later out of major programs that the Congress had thought the funding was appropriated for.

I don't know if you follow me or not. I am not being that clear on it at this point. I just have to tell you that staff tells me again this year that you don't have that much detail, and you want to be relieved of the earmarking and the other things. I don't know how we can do that. Does anybody want to respond to that?

Mr. WALLACE. I can respond to the reprogramming on regulations. I am not really in a position to respond in detail on the expenditures. I think one of the complaints that Mr. Smegal made a minute ago is inherent in our system of doing business.

He said that particular requests in here, the details, whatever, is being decided by the Board. In having a board that meets on a part-time basis, there is a limit to the amount of detail that eleven people with other jobs are going to be able to approve from our staff. The staff has taken, I think, some liberties, not unjustified liberties, in bringing some of the particular proposals before you, but they have never been debated by the Board.

Certainly, the particular details of where each dollar is going to each program has never been debated by the Board and really can't be debated by the Board. If Congress has decided that, if Congress wants more detail in this program, I think this program ought to be run by full-time people.

Senator RUDMAN. We thought it was.

Mr. WALLACE. It is not. We are part-time people.

ADMINISTRATION OF CORPORATION

Senator RUDMAN. Well, you are, but I guess you and some of your colleagues of the present and past have a different view as to your role. Certainly, I do. I think most of my colleagues in the Congress do. One of the great problems that we have had in the past—I don't think we are going to have it with Mr. Bayly, at least I hope we don't—is that the presidents of this Corporation were not running the Corporation; the Board was running the Corporation.

In fact, that is an overstatement. Some members of the Board were running the Corporation. I found it absolutely unseemly to sit in this hearing room in a closed meeting with one of the presidents of the Legal Services Corporation and ask him about a whole series of things that were done and who ordered them, and he said he didn't know.

As a matter of fact, with the computer purchase, frankly, had anybody wanted to play hard ball, it would have been sent to the Justice Department. He sat here and told us he had no idea whatsoever who made the decision; he didn't make the decision; Mr. Durant didn't make the decision. If anybody else had the right to make it, I guess the Chairman did, although theoretically not.

So the point I am making to you is that I would just suggest maybe you ought to give your staff a little bit broader authority. They are good people. They are here all the time; give them general guidance. Let them develop the progarms.

If you are not going to do that, you can't say that we aren't doing it because we are not spending enough time here. I realize you are volunteering your time and the public owes you a debt of gratitude for that, but you can't have it both ways.

So I would say that I hope this year, the corporation staff can be given more responsibility. I share Mr. Smegal's view and commend you for hiring your President. He is a man with an excellent reputation. Give him a little bit more running room. You might have a better relationship with the Congress.

Mr. WALLACE. Mr. Chairman, what you say disturbs me greatly and underlines the fears I have already had. If your President and at least the past President isn't running the Corporation and the Board isn't running the Corporation, I don't know who is. I come here a couple of days every quarter and read reports and do the best we can, as do all eleven of us.

But it has always been my conviction that this Corporation ought to be run by a president responsible to the President who can be fired by the President, and this business of part-time people trying to mind the store on Virginia Avenue—we are a fifth wheel, at best.

Senator RUDMAN. I don't disagree with you. As a matter of fact, I would like to see the Board abolished completely and run like a Federal agency.

Mr. WALLACE. I am amenable to that, Mr. Chairman.

ADHERENCE TO COMMITTEE'S DIRECTIVES

Senator RUDMAN. Let me ask you a question, and in saying this my comments are not directed against this Board or any past Boards. It is just the way things are. You are a hybrid operation. You are a quasi-public operation, but for all intents and purposes, the Congress believes it has the absolute right to control what you do, and I think we do.

There is some resentment about that. The President doesn't know sometimes to whom he is responsible, and it is a real problem. Let me ask you, what is your plain view of committee report language and do you consider such report language to be binding upon the actions of the Corporation and the Board? Let me start with Mr. Bayly.

Mr. BAYLY. The report language, Senator? Well, I certainly think it is strongly incumbent upon the Corporation to pay careful and close attention to every word that comes out of the Congress' mouth. Whether or not, as a legal proposition, committee report language has the same status as statutory language, itself, is something else, of course.

I would like to believe that in practice, the Corporation and its board pays as much attention to the committee report language as it does to any other utterance of the Congress.

In fact, I know we do pay very close attention to it. We seek guidance from the Congress, and it seems to me that has been the Congress' way of providing us with that guidance. As far as I am concerned, it is as strong, it is as impressive, it is as imposing and dispositive as anything else.

Mr. DURANT. Senator, I think that the committee language is instructive. I think that it offers guidance of the committee. I think Mr. Bayly is correct. I don't think it is legally binding, but I think it is important in terms of trying to.

I think you have two different concepts here. One is when Congress set up the Corporation, it wanted it to be an independent, non-political body.

Senator RUDMAN. It didn't work out that way, Mr. Durant. Maybe that is what they intended, but it didn't work out that way, all right?

Mr. DURANT. I understand that. I think we both agree maybe that is part of the problem. But I think it has been evident, certainly, from the number of meetings that we have had, you and I, and with other members of the committee, that we take what the Congress says seriously and try to implement it where it is consistent with your instructions.

Senator RUDMAN. Mr. Wallace?

LETTER TO REPRESENTATIVE NEAL SMITH

Mr. WALLACE. I think I may be the source of some of this question as Chairman of the Regulations Committee. This issue came up before the House committee as to our view of legislative history. I submitted a letter to the House committee explaining my view on the issue and sent a copy to you. I don't know if you have it.

Senator RUDMAN. Oh, yes, I have seen it.

Mr. WALLACE. Well, I have an extra copy that I would submit for the record. I would like it to be included, and I will say, Mr. Chairman, while it is not mine, the fact is that our committee has and our Board has proposed nine separate regulations; eight of them have been approved with no problem.

Senator RUDMAN. We will make the letter a part of the record at this point.

[The letter follows:]

LEGAL SERVICES CORPORATION
[illegible] Washington, D.C. 20024-2751

April 22, 1987

The Honorable Neal Smith
Chairman
Subcommittee on Commerce, Justice, State,
  and Judiciary
Committee on Appropriations
United States House of Representatives
2373 Rayburn House Office Building
Washington, D. C. 20515-1504

Dear Mr. Chairman:

I have been informed by the staff of the Legal Services Corporation that at your Subcommittee's recent hearing on our budget request for Fiscal Year 1988, L. Jonathan Ross, a member of the New Hampshire Bar, questioned my willingness to carry out Congressional intent as a Director of the Corporation. Because these comments do not appear in Mr. Ross's prepared testimony, and because his actual testimony is not yet available, I cannot respond to the particular charges he made. However, I believe it appropriate to explain to the Subcommittee the manner in which I attempt to carry out the mandate of the law, since the Subcommittee must determine what restrictions, if any, to impose upon the authority otherwise granted to the Board by the Legal Services Corporation Act.

The most instructive demonstration of my regard for Congress is my service as Chairman of the Board's Committee on Operations and Regulations. When President Reagan appointed us to the Board in November of 1984, the Appropriations Committees of the House and Senate had expressed their objections to six separate sets of regulations adopted by our predecessors. Our first task was to review those regulations and to attempt to satisfy the concerns raised by the Committees. All of our regulations have been submitted to the Appropriations Committees under statutory reprogramming provisions, and five of those six sets of regulations were approved without objection by either Committee. In addition, two new regulations, on questioned costs and denial of refunding, were also approved. The two Committees did object to the modified lobbying regulation, and Congress forbade the use of 1987 funds to enforce it. We thereupon resumed our negotiations with counsel for the Project Advisory Group and reached a compromise which PAG has agreed to support. While Congress is certainly not bound by this agreed settlement, the record shows that I have made substantial and successful efforts as Chairman to accommodate the concerns of all interested parties.

I understand that Mr. Ross criticized my view of the role of legislative history. I have made quite plain my conviction that only statutes have the force of law, because only statutes are subject to amendment on the floor and veto by the President. Rather than entering into a lengthy discussion on the use of legislative history, I am happy to be able to refer the Subcommittee to Justice Scalia's discussion of the issue with Senators Grassley, Heflin, and Mathias at his confirmation hearings last year. I have enclosed herewith a copy of those portions of the transcript, and I am able to say that they fairly summarize my own views on the subject. While I do not suggest that Justice Scalia's confirmation demonstrates the Senate's acceptance of his views, it certainly suggests that those views do not constitute disqualification from a position of public trust. Nevertheless, while the language of a committee report may not be binding as law, my record as Chairman plainly shows my respect for the Appropriations Committees and my successful efforts to incorporate their views into our regulations.

(CLERK's NOTE: The discussion on legislative history referred to above will not be entered in the record. Reference may be found in the Judiciary Committee publication, "Nomination of Judge Antonin Scalia", Senate Print No. 99-1064.)

I do note from Mr. Ross's prepared testimony that he submitted to the Subcommittee the August 1, 1986, newsletter of Bar Leaders for the Preservation of Legal Services for the Poor in which he contends that "bar leaders or governing bodies from 23 states and 24 metropolitan or county bar associations -- from Massachusetts to Montana, Michigan to Mississippi -- 'signed on' to become a part of 'Bar Leaders for the Preservation of Legal Services for the Poor.'" He goes on to contend that the Mississippi State Bar has passed such a resolution. In fact, my Bar has never resolved to become a part of Bar Leaders for the Preservation of Legal Services for the Poor, although it does support the Legal Services Corporation, as do I. Lest this Subcommittee labor under the misimpression that our Bar has endorsed Mr. Ross's criticism of my performance of my duties, I enclose herewith a copy of a letter of March 31, 1987, from Fred M. Bush, Jr., President of the Mississippi State Bar.

I do not believe that there is any need for me to appear before the Subcommittee to clarify my views, although I would be happy to do so should it please the Subcommittee. However, I would appreciate it if this letter and the documents submitted therewith could be made a part of the hearing record. In order that the Congress may have no doubt of my views, I have taken the liberty of sending a copy of this letter to the ranking Member of the Subcommittee, as well as to the Chairman and ranking Member of the corresponding Senate Subcommittee. Because this matter affects the entire Board of Directors, I have also asked President Bayly of the Legal Services Corporation to send copies to my fellow members of the Board. I also believe that Mr. Ross is entitled to the courtesy of a copy of my reply.

I thank the Subcommittee for its careful consideration of our budget request.

Sincerely,

Michael B. Wallace

Michael B. Wallace

MISSISSIPPI STATE BAR
OFFICE OF THE PRESIDENT

Fred M. Bush, Jr.
President

March 31, 1987

Michael B. Wallace, Esq.
Post Office Box 55507
Jackson, MS 39216

Dear Mike:

The Board of Bar Commissioners regretted that you were unable to meet with us in Oxford, but we certainly understood that it was more important for you to attend the meeting of the Board of Directors of Legal Services Corporation. We do hope that you can meet with us at some future date.

In the meantime, I want you to know that we do appreciate your support of adequate federal funding and all of your efforts to insure the delivery of legal services to the poor.

I hope to express these views to you personally in the near future, but in the meantime, if the Mississippi State Bar can be of any assistance to you in your efforts, please let us know.

With warmest personal regards, I am

Sincerely yours,

Fred

Fred M. Bush, Jr.

pwe

cc: Ms. Phyllis Thornton
Mr. Larry Houchins
Board of Bar Commissioners

LOBBYING

We had problems with lobbying. We went back and reached a compromise in good faith, and I think we have shown whether or not we are bound by legislative history or the will of members of Congress. We are certainly amenable to it and do our best to reach it.

Senator RUDMAN. I think the bottom line is whether it is legally binding or not, the Congress always has the option, if it gets report language that it thinks is important and that report language is not obeyed, then the following year, the Congress will simply put it in the bill.

So I mean, you can't really win from your point of view. So there is no choice on your part, it seems to me but to try to work out these regulations. Nobody is trying to be unreasonable, but there are strong views in the Congress about the Legal Services Corporation, most of them pro.

It seems to me that you ought to try to follow that report language, and if you have a problem, come talk with the people who wrote it.

Mr. Bayly, let me ask you just a very short question. When you and I met last spring, we talked about day-to-day operations of running the Corporation. Are you now convinced that you are running it day-to-day and that nobody else is putting orders over you or under you or undercutting your position as president?

Mr. BAYLY. I would like to believe that I am, Senator Rudman. I have been president for about four months. In that time, I would like to believe that I have been in a position to say that I am running the Corporation.

There might be an incident here, an occasion there that I am unaware of, but so far as I know, I am able to answer your question.

DOCUMENT SHREDDER

Senator RUDMAN. Let me ask you a specific question. Do you own a document shredder at the Legal Services Corporation?

Mr. BAYLY. Yes, there is a document shredder there.

Senator RUDMAN. Are there established guidelines for its use?

Mr. BAYLY. Yes. The guideline is not to use it. That is the sole guideline. It is not used.

Senator RUDMAN. Do you know if it is located in a secure area?

Mr. BAYLY. As far as I know, it is located in a secure area.

Senator RUDMAN. Do you know if everybody has access to it?

Mr. BAYLY. Well, I am afraid I don't know that. As I understand it, it has a custodian, and he is to permit it to be used only with my permission or the permission of another officer, who, thereafter, is to let me know for what purpose.

Senator RUDMAN. We thought you would like to know that we have some pretty reliable information that it was moved from a secure area to, essentially, a storeroom; that it is accessible to anybody who wants to use it at this time.

We also received very reliable information, corroborated by several people, that it was used not too long ago to shred some monitoring reports which the Corporation requested but certain people in the Corporation didn't like because those reports gave the programs that were being monitored a clean bill of health, which was contrary to what the preconceived notions were when the monitoring began.

I think you ought to look into that.

Mr. BAYLY. Indeed I will, Senator.

Senator RUDMAN. I am sure you don't know a thing about it.

Mr. BAYLY. Those are serious allegations.

Senator RUDMAN. You ought to look at that.

Mr. DURANT. Senator, you should know, too, that about a week ago when I was sent information in preparation for this hearing; I was sent monitoring reports. In fact, they were tagged in places because I had specifically asked for this as to where particular programs were, in fact, doing a good job, and I received a good number of those.

I don't know the particular incident of which you speak, but I do know that at least in materials sent to me people—where people were doing a good job, it was sent to me and it was provided.

Senator RUDMAN. I just thought this was something I wanted to raise.

Mr. BAYLY. I am glad you did.

Senator RUDMAN. By the way, I am sure none of you know anything about that. I have no reason to think you do.

Mr. WALLACE. Mr. Chairman, I would request, at this point, I don't know what Mr. Bayly can do other than to see if the shredder is in the storeroom. I don't know what they are supposed to have shredded. If it happened, the Board ought to know about it and what the details are. Right now, I don't know what he can do except look for the shredder.

ROLE OF MS. BANKS

Senator RUDMAN. I don't like to get into personnel specifics here, but I do want to talk about a particular employee, a Miss Banks, because it has been publicly discussed. We talked about this several years ago. I brought to your attention statements made by Miss Banks describing her mission at the Corporation as destroying the Corporation from within and indicating there were other persons with similar missions.

I expressed concern. You expressed concern. You subsequently advised me that the individual, in fact, had made such a statement. You confirmed that to me. You indicated she was a contract employee and that her contract would expire and it wouldn't be renegotiated; in the meantime, she had been moved to a position without responsibility.

She is now a permanent staff member of the Corporation. In fact, she is the Deputy Director of the Office of Management Services and was called upon extensively by the former president to carry out certain special projects. I would like to know what is going on with this lady.

Mr. DURANT. I haven't, number one, as Board Chairman, because of the way in which I think the Board ought to operate, I don't think that we do get involved in the day-to-day personnel kinds of decisions that are made. If there was, as I recall, there was a couple of years ago.

Senator RUDMAN. Do you recall our conversations?

Mr. DURANT. I recall our conversations. I don't recall the details.

Senator RUDMAN. Those details I represent are accurate both as to what I said and as to what you said.

Mr. DURANT. I do recall that Miss Banks had made certain statements. I can go back and check the notes or whatever, but the point is that my understanding was that there was an internal investigation and evaluation in terms of the current positions and whatever; I am not aware of what those are. Mr. Bayly could address them.

Senator RUDMAN. We are told within the last 60 days, information has come to your personnel office that indicates there may be some problems with the information contained in that lady's employment application as to the accuracy of the information contained within it.

Are you aware of that, Mr. Bayly?

Mr. BAYLY. I am not sure, and I will make every effort immediately to find out about that.

Senator RUDMAN. Will you? I was concerned about that. I don't like to see people working within Federal agencies who are dedicated to shutting them down. I don't think that anybody would take too kindly at the Defense Department if the President hired Daniel Berrigan. I have nothing against Mr. Berrigan personally, but I don't think he ought to be Deputy Secretary of Defense, considering his philosophy.

I have the same problem with this lady. I have a lot of questions. Unfortunately, I also have the Iran-Contra hearings, which are starting in about 12 minutes in the Russell Building, so I am just going to go through a few others. I am going to give you another dozen or so for the record. They are not difficult questions. They are not statistical. They are mainly informational.

Mr. DURANT. Do you want the written responses in the ten days?

Senator RUDMAN. No. I will give you adequate time for direct responses. What do we give? Can you do it in 2 weeks, maybe 15 days?

Mr. BAYLY. I am sure we can, Senator.

Senator RUDMAN. Try to get them as soon as you can, a couple of weeks, if you can.

Mr. BAYLY. Yes, Senator.

MONITORING ACTIVITIES

Senator RUDMAN. I have got some very disturbing reports about the monitoring activities. I have no reason to think that any of you specifically are aware of these, but they are very controversial. Many people think they are very hostile and obtrusive. They are conducted by people with preconceived ideas.

Let me say, I am not against monitoring. I think people ought to understand that if they are going to be given large amounts of money to operate programs that there has to be some accountability. It is the way it is being done that tends to be almost accusatory rather than an evaluation process.

Have you had those complaints made to you?

Mr. BAYLY. I have, Senator Rudman, and I have listened to them. I have done a bit of investigation. I have reviewed that very extensive report we made to Representative Kastenmeier.

I looked at responses from the field, who also were provided with a copy of their extensive response. I have seen some areas of problems. I think they are being solved. They are being solved with training; they are being solved with the composition now of monitoring forces which include a management consultant as well as a lawyer as well as an accountant.

I think they are being solved in the renovation of the spirit of monitoring, which includes an emphasis more on management, on improvement, as well as compliance.

Senator RUDMAN. I will give you a question for the record which should be fairly easy to respond to. We have spent a fair amount of money on monitoring. I would like to know how many reports were submitted for 1985 and 1986 and 1987; how many are outstanding and so forth. You can give us those for the record.

Mr. BAYLY. I will be happy to, Senator.

Mr. SMEGAL. I might say, Senator, that these concerns that you have expressed have been floating around for quite awhile. I wrote a letter to Mr. Durant indicating my concern about what I was hearing at that time. I am confident that with Mr. Bayly at the helm, it is going to turn around.

But there are residual reports out there that seem to be problem areas, lots of them. Typical of that was a North Carolina program that, at the point I wrote my letter, had 400 person days of monitoring then. Incredible. They spent $1 million. It was troublesome.

Hopefully, Mr. Bayly will correct that. I believe he has the potential and ability to do so.

Senator RUDMAN. I would say that a word to the wise ought to suffice here. I think this whole monitoring situation is one that has a lot of Members of Congress very disturbed, not because we don't think it ought to be done, but the nature of how it is being done. I am sure the Board members aren't aware of this. That is the type of thing that the President of the Corporation ought to be aware of.

ANTIOCH LAW SCHOOL MONITORING REPORT

We have an interesting situation which has come to our attention I want to ask you about here this morning. We have some allegations by some very credible sources that during the defunding proceeding of Antioch Law School, there was a monitoring report that came in indicating that the school had corrected the problems identified in the first visit. We understand that information was suppressed.

We were also told that there were legal deficiencies in the way the defunding action was undertaken by the Corporation in the Antioch matter which the Corporation knew about at the time the defunding matter was before the courts.

I believe that was either just before or after you were General Counsel.

Mr. BAYLY. I became General Counsel during the pendency of the Antioch matter.

Senator RUDMAN. Are you aware of these allegations?

Mr. BAYLY. I have heard these allegations recently. They do not square with my recollection of what I heard during the Antioch proceedings. However, I have just begun to refresh my understanding of them to see whether there is any credence to that.

Senator RUDMAN. Would you report for the record on that?

Mr. BAYLY. Absolutely, Senator. Surely. I can say here and now that I never, under any circumstances, learned or ever believed there was a suppression of evidence or tampering with it or any sort of abuse either of the process of the judicial or of the litigative or administrative procedure in that case.

Mr. WALLACE. Mr. Chairman, may I add one thing about Antioch? If we suppressed a report, that shouldn't have happened. It disturbs me as a member of the Board. One of my concerns is I don't know enough about what we are doing.

On the other hand, if the Committee means to imply that because the problems were being corrected we should have refunded them, I want to say that I don't think we are under any obligation, as I understand the law, to give somebody a second chance. We may do so, but if we are under some obligation, I wish you would tell us so we don't have any problems.

Senator RUDMAN. I don't think you are under any obligation under the law at all. I think that is a decision you have to make. I was just more concerned with how you were looking at it.

Mr. BAYLY. A proper decision.

PRIVATE FUNDING

Senator RUDMAN. Finally, on private funding, the appropriations rider doesn't restrict private funds, only LSC funds in the area of lobbying. Section 1010(c) of the LSC Act does not provide authority to restrict private funds provided for the provision of legal assistance beyond the "prohibited purposes in the LSC Act."

Yet both in your 1986 and 1987 lobbying regulations, you continued to impose restrictions on private funds that are not imposed by the Act. Why, is the question.

Mr. WALLACE. I will be happy to answer that, Senator. As an independent corporation, I think we have the authority to impose those restrictions unless Congress expressly prohibits it, which Congress has not done.

We did, we believe that there have been cases of abuses of private funds. My committee was presented with information regarding certain support centers that solicit private funds for purposes of lobbying. They assign all the overhead tax funds and use the private funds only to pay the lawyer for the time he is there. You use a U.S. Government taxpayer desk; the man is working with a U.S. Government taxpayer pencil under U.S. Government taxpayer lights and claims that that is private funds. I think that is a major abuse. I think we have the power to stop it unless Congress instructs us not to.

Having negotiated in good faith with the people from PAG, we reached a compromise position. We think it is a sound compromise, and we think that the Committee ought to instruct us that we may go ahead. I think Mr. Bayly is subject to suit right now if he doesn't follow the regulation before it is adopted.

Mr. DURANT. That is a regulation that the Board unanimously agreed to.

Senator RUDMAN. I think that there is some problem there with the appropriations rider, however, as to what you want to do. There is also a legal opinion that we have that you must have, also, that seriously challenges whether constitutionally you can do this. That is why I asked the question.

I am not disagreeing with your logic. Maybe logically you are correct, but the logic and what is constitutionally prohibited doesn't necessarily always coincide, as I am sure you know. At any rate, we will continue our dialogue on that.

STAFF INVOLVEMENT IN POLITICAL CAMPAIGNS

Finally, I just want to say to you something I discussed with the Chairman privately. There is more than adequate evidence now that your Corporation staff or at least some of them, unbeknownst to you, I am not sure whether unbeknownst to your predecessor, were heavily engaged in a particular political campaign to attempt the defeat of a member of the Senate who tended to be rather difficult at times when it came to the Legal Services Corporation, namely me.

They weren't very successful, obviously.

[Laughter.]

Senator RUDMAN. In fact, they were quite unsuccessful, but quite frankly, that is very disturbing, not to me, personally, but disturbing to the system. That shouldn't happen. That just shouldn't happen. It defies everything that I think this country stands for in terms of how government is supposed to operate. Some of the allegations which are very specific and very serious and I have considered not even bothering to have the Congress do a thing with it, but simply to sending it over to the Justice Department with everything that we have and say, "You take care of it." I haven't decided what to do, but I will serve fair warning on the Corporation: They better keep their hands out of political activities when they work for that Corporation. If they want to do something, let them resign from the Corporation and do anything they want. But let them not use the Copropration to get people elected or not elected. It is a terrible thing and it goes against everything we do, and I am sure you agree with it.

Mr. WALLACE. I not only agree with it, but I suggested in a letter to Mr. Smegal—I made two suggestions: I asked that Mr. Smegal provide the Board with evidence of the charges he was making. None of that evidence has been provided by Mr. Smegal or anybody else.

Since I am responsible to you for the conduct of this Corporation, I would like to know about it. The second thing I said in that letter is Congress ought to put us under the Hatch Act; please, please, please, put us under the Hatch Act so this will be illegal. I don't think it is illegal now, but heaven knows it ought to be.

Mr. DURANT. I don't think I would get any disagreement from the Board on that position.

Mr. SMEGAL. Senator, I might add, when I did point out in the letter in November to Mr. Durant and in following conversations, I also pointed out to him it was very difficult for me to conduct an investigation in San Francisco. I thought it more appropriate that possibly some source closer to the Corporation could do that.

Senator RUDMAN. The information I am talking about is not the same information Mr. Smegal referred to; it is quite different. There is some conflict as to whether you are Hatched or not. It is a separate statute. I haven't decided what to do about that. Sometimes it is better to let sleeping dogs lie. I would like to make the point that if anybody else has tendencies like that, they are running into a buzz saw.

LETTER FROM JUSTIN VIGDOR

Senator RUDMAN. The subcommittee has received a letter from Mr. Justin Vigdor of the Interest on Lawyer Account Fund of the State of New York with regard to Legal Services Corporation. The letter will be printed in the record at this point.

[The letter follows:]

Interest on Lawyer Account Fund
of the State of New York

1987 APR 30 AM 10:55

BOARD OF TRUSTEES

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JUSTIN L. VIGDOR
600 First Federal Plaza
Rochester, NY 14614

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Executive Director
LORNA K. BLAKE

April 24, 1987

Hon. Ernest Hollings
United States Senate
Washington, D. C. 20510

Dear Senator Hollings:

I am writing to advise you that the Board of Trustees of the Interest on Lawyer Account (IOLA) Fund of New York has adopted a Resolution, a copy of which is enclosed, opposing the termination of direct federal funding for national and state support centers.

The IOLA Fund, which last year awarded one million dollars in grants for legal services programs, including four grants for state and national support centers, considers these activities to be of paramount importance to the delivery of quality legal services to the poor residents of our state.

As the Legal Services budget is subject to Congressional approval, we respectfully request your consideration of these views.

Sincerely,

Justin L. Vigdor
Chairman
Board of Trustees

JLV:bv
Enclosure

IOLA 270 Broadway, New York, New York 10007 (212) 587-4910

Interest on Lawyer Account Fund
of the State of New York

BOARD OF TRUSTEES

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JUSTIN L VIGDOR
600 First Federal Plaza
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Executive Director
LORNA K BLAKE

RESOLUTION

WHEREAS, national and state legal services support centers and the National Clearinghouse are critical to the effective and economical direct provision of legal services to poor people, as proven by the roles support centers have played as integral parts of this delivery system during the twenty-year history of Legal Services, and

WHEREAS, Legal Service program directors in the communities of New York State have repeatedly expressed their need of and reliance upon the assistance provided by the support centers, and,

WHEREAS, the Board of Trustees of the Interest on Lawyer Account Fund has established that State and National Support Activities benefitting legal services programs and clients in New York State is an important funding priority for its grants program and has provided funds for these purposes, and

WHEREAS, the Legal Services Corporation Board of Directors has voted 6-4 in its 1987 budget request to Congress to turn over all national and state support funding to field legal services programs with no requirement that the funds be used for support services, and

WHEREAS, this vote by the LSC Board, which is not based on any demonstrated factual need for such a shift of funding, will effectively destroy the entire legal services support system at a time when legal services for the poor are already suffering greatly because of lack of funding, and

WHEREAS, the Legal Services Programs of other states in the nation and clients do not support the LSC Board's decision, and the level of satisfaction nationwide with the work of the national and state support centers, and the National Clearinghouse, is high,

NOW THEREFORE BE IT RESOLVED that the Interest on Lawyer Account (IOLA) Fund of New York vigorously opposes the Legal Services Corporation Board decision to terminate direct funding for national and state support programs and the National Clearinghouse, and urges the LSC Board to rescind its action, and urges members of Congress to reject the Board's recommendation in order to assure that the 1987 budget for Legal Services for the poor does not reflect such a change in funding.

SUBMITTED QUESTIONS

Senator RUDMAN. I thank you very much for coming over this morning. We have about two dozen questions for the record. Other members of the panel may have questions for the record. Again, I give my appreciation to Chairman Hollings for allowing me to chair the Subcommittee for the purpose of this hearing.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR BUMPERS

§1011 Procedural Requirements

Question. In your statement you request a change in Section 1011 of the Act so that LSC can defund programs without offering the programs the opportunity of a "full" hearing. To justify this, you say that hearings are so expensive that LSC has only attempted to deny refunding fewer than ten times since 1977. I looked into this and found that you have incomplete information. We are aware of at least 18 denial-of-refunding actions initiated by LSC since 1977 (you excluded 1976 which would add another 14 denials of refunding). Eight of those were in 1984, 1985 and 1986. Therefore, it appears that LSC has not hesitated to use the denial of refunding procedure throughout its history, and that the staff of this Board has employed the procedure successfully several times in the last two years.

In light of these facts, why are you asking for the change?

Answer. As indicated in the Legal Services Corporation's Budget Request for Fiscal Year 1988, "[o]perating under Section 1011 procedural requirements, as modified by the current appropriation rider, causes a tremendous drain upon LSC's [limited] financial and staff resources." The expense of the currently mandated procedures discourages action in all but the most egregious instances and renders the Corporation substantially unable to address other important cases.

The modifications accomplished by the current appropriation provision, which has existed since the FY 84 LSC appropriation, represent much-warranted procedural changes in the section 1011 requirements. Yet, the modified requirements still result in the commitment and expenditure of inordinate amounts of already limited resources.

For example, administrative proceedings alone (excluding judicial proceedings) in denial of refunding to the National Clients Council, Inc. which were conducted under the pre-existing rules, consumed twenty days of trial and thousands of hours of attorney time on behalf of LSC. Outside counsel was compensated in fees of approximately $300,000.00. The administrative proceedings in the denial of refunding of the Antioch School of Law, also conducted under the pre-existing rules, consumed fourteen days of trial and thousands of hours of LSC attorney time.

The proceedings in the Migrant Legal Action Program ("MLAP") and National Social Science & Law Center ("NSSLC") denials of refunding each consumed many hundreds of hours of LSC attorney time. MLAP consumed six days of trial and NSSLC consumed portions of sixteen days.

These figures do not include the time and expense associated with support services, witness time for trial preparation and hearing attendance, stenographic services, and the hearing examiner's services. In each case, the recipient's costs were presumably equally substantial. For example, MLAP has represented that approximately 1200 attorney hours were consumed in its defense and that MLAP's legal fees exceeded $200,000.00.

Although the cost of legal representation has been significantly reduced by LSC's use of in-house counsel, preparation of the required statements, preparation for trial-type hearing, along with the preparation of post-hearing submissions, seeing the matter through an appellate-type review at the Corporation, and the likely path to and through the federal courts constitute an enormous drain on Corporate as well as recipient funds and attention.

Currently, section 1011 procedural requirements call not just for a hearing, but for a "full and fair hearing." The Corporation is seeking the flexibility to allow for a more streamlined and less costly process which, while equitable and responsive to the interests of programs, will allow the Corporation to address significant problems and to use funds for direct delivery instead of extensive, costly, time-consuming section 1011 litigation with programs.

In sum, the Corporation needs a more flexible system. As Professor Davis has prominently noted, "[t]he major malady that cuts deeply into efficiency [of the administrative process] is grossly excessive use of trial procedures." 3 K.C. Davis, Administrative Law Treatise, §14:1 (2d ed. 1980). Professor Davis urges that "such trial procedure can and should be replaced, in whole or in part, by various kinds of informal procedures." Id. Section 1011 does not require a hearing so much as it institutionalizes a cumbersome, inflexible and expensive procedure.

TRIAL ADVOCACY TRAINING, MAY 18-22

Question: You will find attached a copy of a letter to President Bayly from Don Hollingsworth, Executive Director of Central Arkansas Legal Services, concerning the NITA training session scheduled for May 18-22. I agree with the concerns mentioned by Mr. Hollingsworth. Will you respond to each of his concerns and explain why the training announcement was received on such short notice, why no merit or need criteria were used to select the participants, and what type of funding will be provided to the participants?

Answer: On May 18-22, 1987, the Gillis W. Long Poverty Law Center ("Center") sponsored a Trial Advocacy Training at Loyola University of New Orleans, Louisiana. The Center was funded by Congress through LSC in 1985, but it was designed to be independent of the Corporation.

Through negotiations, LSC was able to encourage the Center to provide a five-day, tuition-free Trial Advocacy Training for 50 Legal Services attorneys. When those negotiations were concluded in mid-April, 1987, it was suggested that the training session be conducted in July or August, 1987. Loyola University, however, found that it would be impossible to make the necessary accommodations and arrangements during those months because of the pressing summer school schedule of the University. Thus, the Center recommended that its previously scheduled May 18-22 training session be dedicated exclusively for the benefit of Legal Services attorneys. It was recognized that the recommendation would entail timing constraints, including short notice to field grantees. The Corporation staff, however, decided to accept the recommendation in order to make available the training opportunity, with an estimated value of $100,000, to the Legal Services attorneys who were selected by their respective Executive Directors. If it had not been accepted, no such training would have been conducted during the summer of 1987.

The limited advance notice did not deter the Legal Services programs from submitting registration applications promptly, nor did the method of soliciting applicants favor certain programs located in one geographic region over those located in another. The Center directly received more than 750 applications. When the training was conducted, last-minute changes resulted in the participation of 51 attorneys from Legal Services programs and two attorneys from LSC Headquarters. The trainees represented a total of 39 programs from 23 states, including Alaska and Hawaii. An attorney from Puerto Rico attended the training as well. To obtain such an equitable result, the Corporation modified the first-come, first-served method of accepting trainees by distributing equal numbers of trainee slots among the five LSC training regions.

As to the concern that programs near the training site would have first preference over those located further away within the Southeast region, it does not appear that Arkansas programs were disadvantaged, since another Arkansas program had an attorney attend the training program.

The Corporation used the first-come, first-served method of filling trainee slots for several reasons. First, it was believed that Trial Advocacy Training would be viewed as a highly-valued opportunity by all Legal Services professionals. It was also believed that the individual program managers would be in the best position to identify those attorneys who would benefit from the training. Thus, the Corporation deferred to the programs in allowing them to choose their own applicants. Second, the method helped to ensure that the accepted applicants had a strong desire to receive the training, as demonstrated through their prompt response to the offer. Third, this method of filling trainee slots is one that is normally practiced by the Center.

The Corporation offered scholarships to all LSC attendees and covered 75% of each trainee's transportation and lodging costs, thus defraying expenses that would have otherwise been incurred by the programs. The training notice informed the recipients of this scholarship and provided them with a Corporation telephone number. In the event that the applicants wanted to know more about the scholarship, they could have immediately contacted an identified LSC employee for further information (as many programs did).

Mr. John H. Bayly, Jr., President of LSC, promptly responded to Mr. Hollingsworth's concerns. A copy of the letter is attached.

Central
Arkansas
Legal
Services

May 1, 1987

Mr. John H. Bayly, Jr.
President
Legal Services Corporation
400 Virginia Avenue, S.W.
Washington, D. C. 20024-2751

Re: NITA Training Announcement

Dear Mr. Bayly:

I am writing to voice my displeasure with the notice and procedure being used by the Legal Services Corporation for this training event scheduled for May 18-22, 1987. I am referring to your April 28th letter which we received on April 30th.

I would like for many of CALS attorneys to attend this training, which I assume will be excellent if it is the NITA training with which I am familiar. However, the short notice of this training opportunity presents a serious problem because it is difficult, if not impossible, for our staff attorneys to clear an entire week at this late date. Further, it would be important for any Legal Services program to send a staff attorney who would benefit the most from such training.

There are two other problems with the notice and procedure. You are filling the training slots on a first-come, first-served basis. No merit or need criteria are being used to select the attorneys who will be able to attend. Further, five local Legal Services programs in the Southeast Region could get the ten trainee slots for this region by simply getting their one page registration forms to New Orleans ahead of everyone else.

Then there is the question of paying the cost of transportation and lodging, especially on such notice and with extremely tight budgets in local programs. All that your letter says is that there will be some type of scholarship program which will defray up to 75% of these costs.

I would have hoped that LSC would follow more rational and effective methods for the expenditure of significant funds for such training. I do realize that LSC has not provided much, if any, training to local programs since 1981. But surely these mistakes and problems could have been avoided with any degree of prqper planning.

As a Project Director, I am always eager to take advantage of superior training opportunities for our staff, especially since money is so tight and free or partially free training opportunities are rare. Thus, I am attempting to determine if one of our staff attorneys, who can benefit from this training, will be able to clear that entire week for the training.

I do hope you will realize how frustrating it is to manage a local Legal Services program when some officials and employees of LSC are attempting to terminate what funding we have. This situation is certainly not improved by receiving such a training announcement with the above problems.

Sincerely,

Don Hollingsworth
Executive Director

LEGAL SERVICES CORPORATION
400 Virginia Ave., S.W., Washington, D.C. 20024-2751

John H. Bayly, Jr.
President

Writer's Direct Dial
(202) 863-1839

May 5, 1987

Don Hollingsworth
Executive Director
Central Arkansas Legal Services
Main Office
209 W. Capitol Ave., Suite 36
Little Rock, Arkansas 72201

Dear Mr. Hollingsworth:

Your letter of May 1 correctly voiced unhappiness with aspects of the training sponsored in part by LSC later this month at New Orleans. Notice was undeniably abbreviated and selection will not be determined by extensive examination of merit or detailed determination of need. LSC does expect, however, that all attendees will benefit from their participation and that future events under LSC's sponsorship will be timely announced so that participation in them can be fairly arranged.

Please do pursue participation by your program in this event. I encourage you to telephone Charles Moses, (202) 863-1837, for assistance.

While you are somewhat elliptical in your statement about innominate LSC officials and employees, please be assured that I am unaware of any effort to terminate your funding. I surely would not condone such effort absent the process secured to your program by LSC's statutory and regulatory provisions.

Very truly yours,

JH Bayly

John H. Bayly, Jr.
President

JHB/kgd

Questions Submitted by Senator Rudman

MONITORING

Question. From what I understand, LSC's monitoring practices and procedures are still very controversial with your local grantees and with the organized bar. Most programs feel that monitoring is unnecessarily hostile and intrusive, is frequently conducted by unqualified people in an unprofessional manner, and is more an investigation and accusatory process than an evaluation. What has been done to look into these concerns and what actions have been taken to stop abusive behavior by Corporation staff and consultants?

Answer. Current management has carefully reviewed every allegation of unprofessional conduct by monitors and taken action, where appropriate, to ensure that the few instances of unprofessional conduct are not repeated. Twice in the last year, the Office of Monitoring, Audit, and Compliance has sent each recipient a copy of the most current statement of monitoring policies and practices and not only requested comments or suggestions for the improvement of these policies, but asked that recipients notify the Corporation of any recent instance in which monitors had violated those policies and procedures. (*See* Tabs 1 and 2.)* The Corporation started its current national monitoring program with an essentially all-new staff, new policies and procedures, a fresh commitment to the statutory purposes of monitoring to ensure compliance with relevant law, and a certain amount of resistance from recipients. Indisputably, the Corporation committed initial mistakes. These appear, however, to have been relatively few and comparatively minor in view of the speed and scope which characterized the new monitoring effort. We hope these mistakes were promptly corrected and will not be repeated.

The Corporation, as noted, has twice solicited complaints about monitors and received no significant response. Accordingly, it would appear that problems in 1984 or 1985 were substantially corrected by 1986. Of course, the possibility may exist that few recipients resent being subjected to oversight. Thus, limited controversy may revolve around such general resentment rather than reflect any specific complaints about the manner in which monitoring is conducted.

Parenthetically, many of the current objections to LSC oversight are not new. In 1979, the staff of the various Regional Offices devoted two days of their annual conference to an exercise in answering objections to monitoring. The stated objections were strikingly similar, and in some cases virtually identical, to objections made regarding current practices.

INDEPENDENCE OF MONITORING TEAMS

Question. The Corporation claims that its monitors and monitoring teams are independent and operate as fact-finders. If the teams are independent, does that mean that they are free to manage the visit as they see fit within guidelines laid down by LSC?

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* CLERK'S NOTE: Due to their length, Tabs 1 and 2 have not been reprinted. They are maintained in the files of the Subcommittee.

Answer. Monitoring teams exercise reasonable discretion to manage visits within general and specific guidelines set forth by the Corporation. Monitors are hired by the Corporation to gather accurate facts relevant to the quality, effectiveness, and efficiency of client services and compliance with relevant law and other requirements. This process requires significant objectivity and independence of the grantee being monitored or any entity closely related to the grantee. However, monitors cannot be "independent" of the Corporation, because it is the Corporation that has the responsibility to supervise closely all monitoring activities and to take action in consequence of its results. Each monitor is given general and specific instructions and assignments and must obtain approval for any deviation. Monitors must keep headquarters informed of any problem and use sound, professional judgment in seeking approval for departures from established procedures or further instructions in unusual circumstances.

LSC'S Monitoring Division has provided to all monitors a copy of the May 9, 1986 and February 3, 1987 Responses to the House Judiciary Subcommittee. (See Tabs 1 and 2.)* These responses articulate the monitoring policies and procedures to be followed by all monitoring team members. To the extent that such policies or procedures provide for the exercise of discretion by a team leader or team member, e.g., the exact questions to be asked during an interview, the decision whether an interview should be taped, team members operate with a degree of independence. They must, however, always act under the supervision of Corporate management. To permit unsupervised monitoring would be a grave dereliction of Corporate responsibility and a profound disservice to grantees.

Each visit to a grantee involves issues and circumstances particular to that grantee; therefore, some discretion is obviously needed. The Corporation is careful to ensure that teams, and especially team leaders, have the knowledge, professionalism, and mature judgment to exercise discretion and to seek guidance, approval, or more specific instructions from Corporation management whenever necessary. The Corporation must supervise all monitoring activities to ensure that they are consistent with established policies, procedures and guidelines set forth by LSC. Any deviation from the general or specific instructions given the monitors must be approved by the manager of the Monitoring Division. Similarly, the team leaders are expected to keep the Corporation closely informed regarding any difficulties arising during a visit, to inform LSC of any complaints by the grantee of unprofessional behavior by monitors while on-site, and to follow any special instructions that may arise as a result.

Question. Do they have to get permission from LSC for decisions they make during a visit regarding such things as access to documents, which persons to interview, what procedures for the visit are acceptable, and so on?

Answer. Reasonable decisions regarding the types of documents to request on-site and the persons who should be interviewed are left to the sound professional judgment of team members. Such decisions must remain consistent with the Monitoring Division's instructions for a particular visit and place no unreasonable burden on the recipient. In most instances, on-site document requests can be made only after a thorough review of all briefing materials and preliminary interviews of key program personnel have been conducted. LSC cannot anticipate which documents will need to be requested and reviewed on-site. When in-house information or previous monitoring reports indicate the existence of particular documents that should be reviewed, monitors will receive appropriate instructions and, if possible, the recipient will be asked to review documents for privilege prior to the visit.

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As stated previously, the monitoring policies and procedures to be followed during an on-site visit have been established by LSC and sent to all monitors, recipients and Congress. Any deviation from these procedures must be approved in advance by the Monitoring Division. These policies require specific prior approval for sensitive or unusual procedures, such as interviewing present or former adversaries of a recipient. (See February 3, 1987 response to the House Judiciary Subcommittee, Tab 2 at 43-44.)*

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Question. Is it true that draft reports submitted by the monitoring teams have been edited by LSC staff to eliminate almost all of the favorable references to the program?

Answer. No. All draft reports submitted by monitoring teams are indeed reviewed by staff members of the Office of Monitoring, Audit, and Compliance as they prepare a draft Corporate report. LSC staff ensures the quality of the official reports and that all conclusions contained therein are factual and based on evidence made available to the monitors. Any conclusion about a program in a monitoring report that is unsubstantiated by documentation or other evidence collected by the monitors will not be included in the Corporation's draft report. If sufficient relevant evidence has been collected to support a revised conclusion rather than one that has not been substantiated, the draft Corporation report will be written to conform to the documented facts. For example, if a proposed team report asserts that "the program's reputation with the local bar is good [or bad or whatever]", the Corporation could refrain from including such assertion altogether, if inadequate documentation had been obtained. Alternatively, if other credible and specific documentation were available, the Corporation could summarize it in the draft Corporation report, viz., how many members of the bar had been interviewed, how they were selected, and what offices the interviewed members hold within the bar. The draft Corporation report should then summarize the areas of consensus, the range of opinions expressed, and the extent of direct knowledge of the respondents. Please note that after the Corporation has completed this work and issued a draft Corporation report, the recipient has at least 30 days to respond with documentation refuting any unfavorable conclusions or supporting any proposed favorable conclusion.

Many past monitoring reports consisted of unsubstantiated opinion and vague conclusory statements. Such reports are surely not helpful to the Congress, the Corporation, or the programs. The Corporation has attempted to ensure that no such unprofessional and subjective material is included in its official draft reports and to remain objective in an even-handed, consistent manner, whether the references are favorable or unfavorable. The Corporation attempts, at bottom, to ensure that its decision-making processes operate on a firm foundation of substantiated fact. Objective, factual reports will be most useful for other users of information about legal service programs such as the Congress, local boards of directors, the client community, program staff, and other funding sources.

MONITORING

Question. During 1986, the Corporation spent a substantial amount of money on monitoring, doing well over 250 monitoring visits. How much does the Corporation plan to spend on monitoring during fiscal year 1988?

Answer. The Corporation's budget for fiscal year 1987 includes $3,758,114 for monitoring (the Monitoring Division and Regional Offices); the total for all of the Office of Monitoring, Audit, and Compliance is $4,881,998. The Corporation expects that similar amounts will be allocated for FY 1988. By way of comparison, the Corporation's 1981 annual report indicates that the Corporation spent $5,595,000 in FY 1981 on monitoring and evaluation. As reported by GAO, the Corporation's monitoring efforts at that time were infrequent, uncoordinated, and untimely. Current expenditures for monitoring are over $1,800,000 lower in constant dollars; since there has been approximately 26.6% inflation between 1981 and 1987, the reduction in real dollars is over $3,300,000.

In spite of a nearly 50% reduction in resources since FY 1981, the product is both more factual and more complete. For example, the 1981 report on Legal Services of North Carolina (enclosed at Tab 1 at subtab 2-A-6)* is reasonably representative of reports produced in that period. This report not only fails to mention extensive controversial activities known to monitors, i.e., diversion of resources from legal services to grass roots lobbying (see Tab 1 at 1-3 of subtab 2),** but consists of only 21 pages of generally superficial comment. The 1987 draft report on this grantee consists of approximately 1,400 pages that led the grantee to submit over 5,500 pages of comments. Although this report is unusually long, we believe that any comparison of a reasonable sample of pre-1986 reports with subsequent reports on the same programs would show a dramatic improvement in quality.

Question. How much of an increase does this represent over FY 1987?

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Answer. The Corporation has proposed no increase but seeks to maintain in FY 1988 the same level of monitoring activity as in FY 1987. As discussed in the preceeding question, the Corporation's expenditures on monitoring have been substantially reduced since FY 1981 while the quantity and quality of output has increased.

Question. Give me some facts about monitoring. How many final reports for 1985, 1986, and 1987 are still outstanding?

Answer. Of the 230 on-site reviews conducted in 1985, 49 final reports remain outstanding (excluding visits from which an acceptable report was not produced by the monitoring team).

Of the 197 on-site reviews conducted in 1986, 123 final reports remain outstanding.

Of the 16 on-site reviews conducted in January 1987, 16 final reports remain outstanding. Even under the Corporation's unrealistic target of 100 work days for completion of final reports, reports for visits conducted after January 1987, would not be issued before May 1987.

Question. How many reports has LSC refused to release to programs because they were incompetently done?

Answer. LSC headquarters did not begin tracking or maintaining records related to monitoring visits and report processing until late 1984. Prior to that time, LSC regional offices were primarily responsible for monitoring and for submission of reports to recipients; they were, therefore, expected to maintain records of these activities. Unfortunately, most Regional Offices did not maintain adequate records. LSC has no accurate records of which monitoring reports have been released to a grantee as an official final report by the regional offices. It is, therefore, not possible for LSC to respond accurately to this question as it relates to visits conducted prior to January 1, 1985.

LSC's records indicate that since January 1, 1985, approximately 42 monitoring reports have not been issued to grantees because LSC determined that the reports were not well documented and that statements made and conclusions drawn by the monitoring team could not be substantiated by LSC. Consequently, the reports did not enable LSC to assess the quality and quantity of client services provided by the grantees for the time period covered by the on-site visits, nor could LSC determine whether the grantees were in compliance with the LSC Act, regulations, and applicable grant conditions.

Question. Have you personally received any complaints about monitoring and looked into them?

Answer. The Corporation and its officials receive many inquiries about particular monitoring visits or requests for variation in the scheduling of visits, for extensions of time in which to comment on a draft report, and for modification of a document request. Such inquiries and requests are forwarded to the manager of the Monitoring Division for resolution in accordance with policies and the particular facts presented to justify the request.

Any complaint raising an issue concerning the professionalism of a monitor, of a failure to follow established policies, or of the need to reconsider policies, is carefully reviewed by senior Corporate officials. All complaints or allegations received by Corporation officers and managers have been carefully reviewed and, where appropriate, expeditious action has been taken. As a result of complaints and/or allegations, LSC has refined some monitoring policies, instituted new policies, and, on a very few occasions, discontinued use of particular individuals. The President and officers of the Corporation make a conscientious effort to evaluate and resolve each complaint that they receive. The Corporation's practice is to respond with particularity and speed to every critical allegation or complaint.

Question. Do you think this has to be an adversarial process for your grantees?

Answer. No. Monitoring is not intended to be an adversarial process. Monitoring is an arm's-length relationship that is neither conceived nor executed in a spirit of antagonism. Rather LSC conducts its monitoring program in accordance with the statutory requirements of the Legal Services Corporation Act, the Code of Federal Regulations, the conditions and assurances agreed to by LSC grantees, and established monitoring policies and procedures.

Monitoring is, in its essence, a normal component of the federal grant process; it is an essential component of fulfilling the Corporation's fiduciary obligation to ensure that federal funds are used effectively and efficiently to provide quality client services in accordance with the Congressional intent. The vast majority of LSC's grantees view the monitoring process as a necessary and unexceptional part of "doing business" with LSC and as an understandable requirement of receiving taxpayer funds.

Question. I have some specific questions which relate to objections I have heard concerning monitoring. Why do you ask programs to provide you, in advance of a visit, with up to six years' worth of documents?

Answer. The volume of documents requested by LSC generally relates directly to the size and level of activity of the grantee. Although the time-frame for most document requests ranges from one to three years, LSC does, on occasion, request documents dating back six years. Such requests are necessary, for instance, where there is no evidence of a thorough, documented, arm's-length monitoring for that time period, where the most recent LSC monitoring report did not address certain aspects of the program, or where it is necessary to review a serious pattern of complaints about a program. In addition, LSC's in-house review of a grantee's documents occasionally reveals a questionable activity or a potential compliance issue which requires review in greater detail. In these instances, LSC will submit a detailed request for documents that may date back six years.

The six-year time-frame is never casually or heedlessly invoked. When utilized, it is consistent with the most relevant administrative statute of limitations. (See 45 C.F.R. §§1625.3(b), 1630.7(a).)

Moreover, LSC will occasionally ask programs to provide up to six years of documents when the General Accounting Office (GAO) or others have pointed out significant violations of law on the part of these grantees. (Findings of several GAO reports were summarized in GAO's testimony at the hearing of the Senate Labor and Human Resources Committee on April 11, 1984.) LSC's monitoring conducted during one time frame under review by GAO, specifically 1980 and 1981, often did not provide any indication of the statutory violations or questionable activities by grantees investigated by GAO. Rather, the 1980-81 monitoring reports issued by LSC lacked any reliable, objective facts relevant to a determination of how widespread or substantial the violations might have been. (See, Tab 1 at subtab 2, material submitted by LSC on January 27, 1986, for inclusion with the record of the Subcommittee on Courts, Civil Liberties and the Administration of Justice hearing on October 30, 1985.)* LSC's failure to fulfill its statutory and fiduciary responsibilities in the early 1980's has prompted current LSC staff to request relevant information from grantees dating back to 1980 and 1981. Request for such documentation may enables LSC to ascertain and document the extent of grantee involvement in areas that relate to possible violations and to determine whether appropriate measures have been taken to ensure current compliance.

Such decisions are made on a case-by-case basis; LSC does not impose extensive document requests except where absolutely necessary and intends each request to be reasonable.

A further word of explanation may be helpful. A recipient of LSC funds, likely any other organization, cannot be understood by reviewing its activities during a short period. Rather, a thorough analysis of its performance requires an understanding of the recipient's historical development, problems, and activities over several years. For example, the GAO's findings relating to the transfer of funds from Texas Rural Legal Aid, Inc. to a related entity in 1982 remains an issue of current importance. In fact, the related entity has continued to expend these funds in 1987 and appears to have avoided providing any accounting for those funds. It is impossible to fully understand this grantee and its related entity without examining this major transfer and subsequent expenditures of these funds.

Question. What guidelines are used to determine whether you will ask for documents for the past two years or the past six years?

Answer. First, LSC's "statute of limitations" provides the Corporation with the ability to review documents up to six years old. Second, in those cases where LSC monitored a grantee in the past two years, and the monitoring resulted in a thorough, well-documented final report, LSC will usually ask thegrantee to submit documents subsequent to the date of relevant documents on file from the last monitoring visit. Third, Corporate management may approve more extensive document requests covering a longer time frame when, in its sound professional judgment, this is warranted in order to resolve complaints, or address important issues. The Corporation gives careful consideration to minimizing the actual burden on the recipient and has been willing to recast requests to avoid hardship on recipients.

Question. Have monitors not been reemployed because they fail to find fault with program operations?

Answer. No.

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Question. Why do you refuse to hire monitors who have ever worked in legal services?

Answer. LSC does not refuse to hire monitors who have worked in legal services. In fact, there are members of the LSC staff and current monitoring consultants with legal services experience. However, LSC has not purposely asked anyone associated with a program or its board, appointing authorities, or staff, to monitor that program because of LSC's desire to avoid the appearance of a conflict of interest. For similar reasons, LSC has been reluctant to employ current program personnel to monitor other programs.

Question. How is it that three years after LSC supposedly reformed its whole monitoring process, you still are rejecting your own reports because they are incompetently done?

Answer. The LSC Board of Directors approved a budget for the start-up of new monitoring activities during its meeting in May 1985. After that decision, LSC spent several months recruiting staff, developing initial policies and consolidating the selection and supervision of monitors at headquarters. Many monitoring visits conducted during 1985 were transitional and made under new management with new employees and consultants. Mistakes were made and policies were developed or adjusted to prevent recurrence of the same or similar errors. This process of learning from experience and adjusting policies is normal and can be expected to continue. The Corporation has made substantial progress in achieving the initial design of monitoring envisioned in the spring of 1985. Implementation of that reform was in place by January 1986. However, the Corporation has continued its attempt to improve both the design and implementation of the process. In general, it has been closer to a year and a half (rather than three years) since LSC completed reform of its monitoring process.

The majority of the approximately 42 rejected reports were for visits that occurred during the transition period; only 6 have been rejected for visits conducted since January 1, 1986. LSC is disappointed with the need to reject any report, but the Corporation recognizes that an effective quality control system will lead to some rejections. LSC has gradually raised its standards to improve the professionalism of final, public monitoring reports.

Question. Your monitoring staff has a terrible reputation in the field for failing to answer its mail and refusing to return telephone calls about monitoring. Do you have an explanation?

Answer. The Monitoring Division attempts to reply promptly to all telephone calls and correspondence from LSC grantees. We are aware of some situations where telephone calls and correspondence should have been answered more speedily. In general, delays have resulted when the inquiry required a more extensive search of corporate files than had been expected. The Monitoring Division has apologized for each known instance of undue delay but would emphasize that delays must be considered in light of the high volume of letters and calls received from LSC's 323 grantees.

Question. Why does your Director of Monitoring refuse to tell a program how many people will be coming on the visit or what their names are until the day before the visit begins? Isn't this unnecessarily adversarial?

Answer. Several reasons explain why the Monitoring

Division notifies each recipient of the names and professions of the monitoring team on the last business day prior to the visit. (See the February 3, 1987 response to the House Judiciary Subcommittee, Tab 2 at 21 - 22.)* LSC adopted this practice to avoid premature communications and because the use of independent consultants requires flexibility in team composition. Unexpected scheduling conflicts have resulted in the last-minute replacement of particular monitors. The current practice, therefore, avoids possible confusion in scheduling. Further, extensive notice to grantees of the names of monitors historically was given so that the recipient could assist in planning the visit. As responsibility for scheduling interviews and planning the visit now rests with LSC, notice is given basically as a courtesy and as a means of introduction.

Question. Does the Corporation issue instructions to all monitors about not invading the attorney-client privilege and the rules of confidentiality? If so, please provide the Committee with a copy of the instructions.

Answer. All monitors received a copy of the May 9, 1986 and February 3, 1987 responses to the House Subcommittee (See Tabs 1 and 2)** and are strictly instructed to adhere carefully to the policies and procedures set forth therein. Both documents contain written instructions regarding the attorney-client privilege. At page 64 of the May 9, 1986 response, LSC states that monitors are instructed to be mindful and aware of the attorney-client privilege and are to act in complete conformity with the highest standards of their profession including the ABA Canons and other ethical standards. In addition, pp. 19-20 of the February 3, 1987 response describes the fact that LSC monitors are routinely instructed to respect the attorney-client privilege when asserted by a legal services program. (*See* Tab 3-6 for materials provided to monitors at LSC's monitoring workshops.* Materials include the ABA Code of Professional Ethics.)

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Instructions to monitors also include a procedure to follow when a questionable assertion of privilege is made by a grantee (*e.g.* the withholding of travel records, cancelled checks). (*See* Tab 2 at 19.)**

In addition to its instructions to monitors, LSC requests the executive director of each grantee to give a copy of relevant state bar opinions regarding the attorney-client privilege to the team leader on the first day of the on-site visit. This enables LSC monitors to familiarize themselves with the particular standards governing a grantee prior to making on-site document requests.

Question. Of the over 400 visits LSC has done since June 1, 1985, how many of those programs have received final reports? How many of those visits have led to some disciplinary action being taken against the program?

Answer. As of May 29, 1987, 200 reports had been issued as final documents for the 455 on-site reviews conducted (including follow-up reviews) since June 1, 1985. Of the 455 visits, five resulted in the initiation of an action to deny refunding pursuant to 45 C.F.R. Part 1625. The programs affected by such actions, and the status of the actions, have been provided below for your information.

1. MIGRANT LEGAL ACTION PROGRAM - settlement reached;
2. URBAN LAW INSTITUTE (ANTIOCH SCHOOL OF LAW) - settlement reached;
3. CENTRAL LOUISIANA LEGAL SERVICES - settlement reached;
4. NATIONAL CLEARINGHOUSE - currently in litigation; and
5. NATIONAL SOCIAL SCIENCE AND LAW CENTER - currently in litigation.

In addition to the above-noted actions, the Corporation stopped funding the Urban Legal Foundation and decided not to extend funding for the Constitutional Law Center.

In addition to denials of refunding, other actions have been taken. Programs have received special grant conditions which require the correction of specific problems. Some programs have been put on month-to-month or on quarterly funding which can serve as a probationary period during which the program has the opportunity to correct instances of non-compliance or resolve apparent problems before or in lieu of LSC's initiation of formal proceedings. In addition, LSC's informal efforts (including the requirement that a recipient's board of directors adopt a corrective action plan) have led a few programs to institute major changes in structure, operations, and leadership to correct problems found by monitors.

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Question. Are monitors ever given a quota of "problem areas" to find in a program?

Answer. No. LSC monitors are given instructions on the fact-finding tasks they are to perform while conducting the on-site portion of a monitoring review. The Corporation expects its monitors to gather sufficient facts to determine if there are problems and, if problems are identified, their significance. All fact-finding is to be objective, fair, thorough, well-documented, and accurate.

Question. Are monitors ever excluded by the team captain from an exit interview at which the program is told the findings of the visit when they have requested the right to be present? If so, how do you justify this?

Answer. LSC's written policy regarding exit interviews can be found at page 40 of LSC's February 3, 1987 response to the House Judiciary Subcommittee. Although the team leader is responsible for conducting an exit interview with a grantee's executive director, other team members may also be requested to attend. The exit conference is a meeting between representatives of the Corporation and of the recipient. The Corporation has the right and duty to determine who is to be its representative; no particular team member has a "right" to be such representative. It would, of course, be a fundamental conflict of interest for a monitor to represent the program being monitored. Decisions regarding the content of exit interview remarks and attendance at exit conferences are left to the discretion of the team leader and the manager of the Monitoring Division. It should be noted, however, that the exit conference allows LSC to present preliminary observations or team findings. The exit conference is not the occasion to debate or resolve disagreements among team members or between the team and the program. The exit conference must be conducted with the clear understanding that all findings presented are tentative and unofficial since the team normally has not completed its analysis of all relevant documents and facts discovered on-site.

Question. In monitoring visits done since 1984, what is the longest period of time that passed between the conclusion of a visit and the issuance of a final report? In 1985 and 1986 what was the average length of time between the conclusion of a visit and the issuance of a final report?

Answer. Records of monitoring visits conducted from January 1, 1985 to May 29, 1987, indicate that the longest period between the conclusion of a visit and the issuance of a final report was approximately twenty-one months. Conversely, the shortest period between the conclusion of a visit and the issuance of a final report during this period was 54 days. Review of records for visits conducted between January 1, 1985 and December 31, 1985, show that the longest period of time that passed between the conclusion of a visit and the issuance of a final report was approximately twenty-one months. The shortest period between the conclusion of a visit in 1985 and the issuance of a final report was 54 days. Records for visits conducted between January 1, 1986 and December 31, 1986, indicate that the longest period of time that passed between the conclusion of a visit and the issuance of a final report was approximately thirteen months. The shortest period of time in which a final report was issued after the conclusion of a visit in 1986 was sixty-one days later. The longest period that has passed, after a visit was concluded between January 1 and December 31, 1985, without the issuance of a final report (with the exception of reports which were rejected) has been approximately twenty-four months. Review of records for visits conducted between January 1, 1986 and December 31, 1986, indicates that the longest period that has passed without the issuance of a final report (with the exception of reports which were rejected or on which action was terminated) has been approximately fifteen months.

To our knowledge, the longest period of time from the conclusion of a visit to the issuance of a final report for visits conducted between January 1 and December 31, 1984, has been approximately three years. Our ability to respond with certainty to this question is handicapped by our lack of documentation regarding the provision of final reports to grantees by the offices responsible for monitoring conducted during most of 1984.

For visits conducted during 1985, the average length of time between the conclusion of a visit and the issuance of a final report was 283 days. For visits conducted during 1986, the average length of time between the conclusion of a visit to the issuance of a final report was 218 days.

Question. LSC recently conducted a training event here in Washington for monitors. Please describe the goals and agenda for that event. How many people attended? Please provide to the Subcommittee the attendance list, list of trainers, agenda and a copy of all materials handed out. Was a video or audio tape of the meeting made -- if so, the Subcommittee would like a copy.

Answer. LSC's Office of Monitoring, Audit and Compliance recently conducted two monitoring workshops. The first was a two-day workshop held March 2-3, 1987 for monitoring team leaders residing in the Washington, D.C. area. Forty-three consultants and staff members attended the workshop. The purpose of the workshop was to instruct team leaders in their monitoring-related responsibilities and to obtain feedback from team leaders regarding possible improvements to LSC's monitoring process. The first day of the workshop included a three-hour presentation on the LSC Act and regulations; discussions of monitoring policies, in-house review of documents, and planning for a visit; and a panel forum on the role of team members and the team leader. On the second day of the workshop, participants were divided into small groups to conduct an analysis of a hypothetical grantee. Participants were asked to identify issues that should be monitored prior to and during the on-site visit. In addition, monitoring methodologies, interview techniques, and documentation that should be requested were discussed. At the conclusion of the small group discussion, all participants reconvened for the purpose of discussing small group findings.

During the last half of the second day, LSC administrative policies and procedures were discussed and a question and answer period followed. In addition, two hours were devoted to instructing team leaders on the preparation of reports for submission to LSC. At the conclusion of the workshop, participants were asked to complete an evaluation form. LSC received twenty-five evaluations which uniformly showed a positive response to the workshop.

A summary description of the monitoring workshop held March 2-3, 1987, along with a copy of the agenda, attendance list, list of trainers and copies of all materials handed out at the workshop can be found at Tabs 3 and 6.*

Seventy-six consultants and staff members attended a similar workshop for monitors on May 3-6, 1987 in Washington, D.C.. On May 3, 1987, participants registered for the workshop and the manager of the Monitoring Division held a two-hour discussion on LSC administrative policies and procedures. Fifty-seven of the participants (primarily consultants) attended this session.

On the morning of May 4, 1987, participants were given a detailed presentation on the LSC Act and regulations. During the afternoon, monitoring policies and procedures were discussed in more detail. From 2:30 - 6:30 p.m., a panel consisting of the manager of the Compliance Division, five members of the LSC monitoring staff, and LSC's EEO Administrator discussed the roles of the team leader and team members in monitoring. Particular emphasis was placed on the following: (1) the role of the legal monitor; (2) the role of the management monitor; (3) the role of the fiscal monitor; (4) handling complaint-related issues; (5) assessing compliance with EEO, Affirmative Action and handicapped accessibility requirements; and (6) the role of the team leader.

On the morning of May 5, 1987, LSC's monitoring planning and report writing processes were discussed. In addition, an overview of monitoring activities from July 1, 1985 to December 31, 1986, was given. At the conclusion of these presentations, participants were divided into small groups in order to analyze hypothetical information relating to a hypothetical grantee. The purpose of this analysis was similar to that of the March 2-3, 1987 workshop; the small group discussion was intended to sharpen analytical skills, facilitate the exchange of ideas relating to monitoring and interviewing techniques, and provide feedback to the Office of Monitoring, Audit, and Compliance on possible improvements. Since participants of the March 2-3, 1987 workshop found the small group discussion to be most beneficial, the time frame of this session was extended to a two and one-half hour period during the May workshop. Again, after the small group discussion concluded, participants reconvened and engaged in a large group discussion of the issues relating to the hypothetical grantee.

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LSC received fifty-one evaluations of the workshop from consultants. On a scale of 1-5 (with 1 equalling excellent), the workshop received an overall rating of 2. A copy of the agenda, attendance list, list of trainers, and copies of all materials handed out during the workshop can be found at Tabs 4 and 6.*

On May 6, 1987, LSC held a workshop for twenty-six fiscal monitors for the purpose of discussing procedures to be followed in performing a fiscal review of a grantee. In addition, participants were requested to ask questions and provide feedback on possible improvements in fiscal monitoring. A copy of the agenda, list of participants, list of trainers, and hand-outs utilized during the fiscal workshop can be found at Tab 5.** The Corporation made no video or audio recording of either training workshop.

RESULTS OF MONITORING VISITS

Question. In speaking to the New England Bar Association Meeting in January of 1987, LSC Board Member Basile Uddo disclosed that of the 387 monitoring visits conducted between May 1, 1985 and December 1, 1986, only a very few had resulted in findings of violations or required any corrective action by the grantee or disciplinary action by LSC. In his words, monitoring was not uncovering "any huge problems" in program performance. Do you agree with that assessment?

Answer. Yes, with the understanding that all monitoring reports make some recommendations for improvement of the program's efficiency and most suggest areas in which the program should make some relatively minor or non-controversial changes to conform to various legal requirements. Further, where the Corporation has taken formal or informal action because of more serious compliance problems, less than ten percent of field programs had problems in performance or compliance that were serious enough to warrant special attention or enforcement action. A few programs have been found to have extremely serious problems -- gross mismanagement, absence of productivity, and serious defalcations.

Question. Are those facts accurate?

Answer. It is accurate to say that only a small percentage of the monitoring visits conducted between May 1, 1985 and December 31, 1986, discovered and documented violations that resulted in disciplinary action taken by LSC. However, aside from the initiation of defunding proceedings, the Corporation has also requested that corrective action be taken by a number of grantees. Such actions ranged from a minor recommendation being made in a monitoring report to a formal request being made to a grantee's board of directors for the development of a detailed plan of corrective action.

Question. Is there a need to rethink the Corporation's approach to monitoring?

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The Corporation must always be re-examining its aproach to monitoring while the Board remains staunchly committed to compliance, it has recognized even more vividly the need to assert, through the constructive analysis, rounded by a thorougy monitoring, in the more effective and more efficient provision of legal services by the programs.

Answer. The Corporation must always be re-examining its approach to monitoring. Over the past two years, Corporation management has devoted careful attention to the monitoring process. Such attention has resulted in considerable refinement through the establishment of policies and procedures and the hiring and training of more qualified and objective consultants. While the Board remains staunchly committed to compliance, it has recognized even more vividly the need to assist, through the corrective analysis, provided by a thorough monitoring, in the more effective and more efficient provision of legal services by local programs.

MONITORING WORKSHOP DOCUMENTS

Question. On May 4-5, the Monitoring Division of the Corporation conducted a workshop for monitoring team leaders. At this workshop, the Monitoring Division distributed a sample "Monitoring Workplan" and a sample "Draft Report of the Monitors" of a fictitious Legal Services Grantee, known as "Legal Services of Anywhere". Both documents were marked "Confidential." Why are these documents marked "Confidential" if they are simply examples to be used by monitoring teams?

Answer. All analyses of a grantee prior to a visit and draft reports are confidential and monitors are trained to always treat these documents with proper care. All actual documents with actual information about a real -- rather than a hypothetical grantee -- should be marked confidential to avoid accidental release and damage to a program's reputation from the premature discussion of apparent problems that later prove illusory or unfounded.

Question. The Monitoring Workplan introduction states:

> "Review by LSC staff of in-house documents and documents requested from Legal Services of Anywhere has revealed several potential problems. On-site monitoring should focus on the issues below, but not to the exclusion of important issues which may become apparent only on site, and are added to the workplan, once approved by LSC Headquarters."

Do the instructions given in the introduction of the sample Monitoring Workplan compromise the ability of the monitoring team to conduct an independent and objective analysis in that it appears that the monitors must first obtain approval from the Corporation before making any changes to the workplan?

Answer. Monitors are hired by the Corporation to gather accurate facts relevant to the quality, effectiveness, and efficiency of client services, and the program's compliance with relevant requirements of law. This process requires significant objectivity and independence of the grantee or any entity closely related to the grantee. However, monitors cannot be "independent" of the Corporation which has the responsibility to supervise closely all monitoring activities. Each monitor is given general and specific instructions and assignments and must obtain approval for any deviation. Monitors must keep headquarters informed of any problems or unusual circumstances and use sound, professional judgment in seeking approval for departures from established procedures or for further instructions in unusual circumstances.

Question. The sample monitoring report provided at the workshop presents an example of how to write a report confirming all of the problems identified by the Corporation in the workplan. No examples are given of information identified by monitors which could assist the programs in meeting problems or which would indicate that deficiencies identified in the monitoring workplan were in fact not deficiencies. Do these documents indicate a lack of objectivity in the monitoring program?

Answer. No. Most potential problems identified before an on-site visit will be found to be either illusory or insignificant; and monitors rarely need instruction or training in reporting these findings. The greatest care must be taken, however, in documenting problems so that a monitor's work can be subjected to independent verification. The Corporation cannot afford to act upon an erroneous finding that a recipient has a problem, whether because of a mistake by one monitor or a whole team. Monitoring reports not only identify statutory violations or failures in efficient delivery of services to eligible clients, but make general and specific recommendations for the correction of violations and for the improvement of efficiency. The recipient is always given at least 30 days to respond to a draft report with documentation refuting any unfavorable conclusions or supporting any proposed favorable conclusions.

Question. The information provided from the Corporation to the Committee over the last several years contains no mention about what the local programs are doing with the grants they receive from the Corporation. There is nothing written about program operations (either pro or con) or about client services. Are the local programs doing a good job?

Answer. The current monitoring program has given LSC managers the strong impression that many programs are doing an excellent job. Generalizing accurately about the performances of field programs is difficult at this point, because we are only now obtaining enough information from monitoring to enable LSC to analyze the results and summarize useful and reliable information.

As in any field, it is clear that there are variations in the quality and efficiency of performance. It appears, however, that the range of variations in performance among LSC grantees is especially broad, with some programs doing an excellent job and others having serious deficiencies which reduce the quality and quantity of services provided to eligible clients. One possible explanation for this apparently unusual range between the best and the worst programs is absence of serious oversight for many programs until the current monitoring effort. LSC's monitoring from at least 1980 to 1985 was often sporadic and less-than-arms-length; it resulted in superficial and subjective reports.

The failure of effective oversight allows organizations to grow lax and provides opportunities for defalcations; we have found examples of both and of violations of Congressional restrictions on the use of tax funds. We have attempted to deal with each problem in a responsible and competent manner and to work with each program concerned to resolve problems in an amicable manner -- whether these problems relate strictly to compliance issues, management efficiency, or overall quality and quantity of services provided. We have been especially reluctant to take adverse action against field programs to avoid unnecessary diversion of funds from client service. We prefer to persuade local managers or boards to improve the existing program rather than to defund it and start a new program.

Given the limited reliable information available to the Corporation until recently, it would seem unlikely that a documented, professionally responsible assessment of local programs' provision of legal services could have been produced. Based in part on this lack of information, the Corporation initiated plans to intensify the monitoring effort in the spring of 1985, so that reliable, factual information relating to the performance of grantees could be obtained. This monitoring effort began approximately in July, 1985, and has continued to the present. The Corporation gathered sufficient information to begin drawing generalized conclusions about grantee performance and prepared the first overview of an important group of grantees in September 1986. This was a report on the preliminary findings of the 1986 monitoring of all national support centers. (See Tab 7.)* This summary of monitoring and other findings covered one rather small group of similar grantees, all of which had been visited within a relatively short period. A comparable summary of information about basic field programs will require careful analysis of many more entities which have a greater range of characteristics. In order to be able to provide better answers to such questions, staff have been asked to work on additional overviews of grantee performance.

Question. Are clients being served?

Answer. Yes. Clients are being served by a large number of programs. As discussed above, there are wide variations in performance. The Corporation is attempting to help particular programs improve performance while it develops accurate generalizations about the performance of programs.

As you may be aware, LSC receives case service reports from each recipient on a quarterly basis. These reports provide certain data regarding the number and types of cases closed. Without oversight and field verification of those reports during monitoring, data from such reports would be unreliable, as some programs would grow lax in the quality of their reporting and would evolve significantly different practices as to, for instance, which client contacts do not include enough client service to justify reporting the contact as a case.

In addition, the Corporation finds difficulty in verifying the accuracy of data on the quantity of client services as it has no direct access to supporting documentation, including client files. To assess the average quality -- as opposed to the quantity -- of services, however, is extrememly difficult without access either to clients or client files. Moreover, the program's reputation with bar leaders, opposing counsel, and judges extends only to the rather small percentage of clients whose legal problems resulted in litigation.

As stated to the House Judiciary Subcommittee, an ideal way to measure the quality of a program's legal representation would involve, among other things, taking the following steps with regard to a representative sample of cases: (1) identification of each individual client's problemand desires; (2) the identification of all possible solutions for solving the problem; (3) an analysis of the necessity, quality, and quantity of all the actual work performed and how it relates to the resolution of the legal problem the client wants resolved; (4) an analysis of the outcome of the legal representation and whether the outcome satisfies the client's initial problem and actual desires in an efficient manner; (5) an analysis of how the resolution is monitored in-house; (6) an assessment of the costs of the case in comparison to the benefits to the client; and (7) an analysis of the next case handled by the attorney in the same subject area. (See Tab 1 at 70.)*

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* CLERK'S NOTE: Due to its length, Tab 7 have not been reprinted. They are maintained in the files of the Subcommittee.

Question. Do the programs have in general the support of the local bar and the community they serve?

Answer. Yes. Many programs are enthusiastically supported by local bar leaders and most are supported, at least in principle, by the local bar leaders. Some programs, to be blunt, appear to have an unfortunate reputation with at least some involved bar leaders. We have not yet analyzed enough monitoring reports to provide more accurate and detailed generalizations, but can attempt to provide a summary of bar relations with local programs at a later time among the overviews of monitoring results.

During most monitoring visits, monitors interview members of the local bar, judiciary, and other individuals in the community who may be familiar with the work of the recipient being monitored. The focus of these interviews varies depending on the individual's knowledge of the recipient and the particular circumstances of the recipient. For example, members of the local bar are often questioned about the role of the bar in the board member appointment process, the recipient's private attorney involvement, and the recipient's priority-setting process. Private attorneys who may be unaware of the bar's role in these areas are often asked about their knowledge of the recipient's legal representation or their involvement in any pro bono or reduced-fee program maintained by the recipient. Monitors usually ask knowledgeable judges for their perceptions of the quality of the program's legal representation.

Before the current monitoring cycle, recipients selected and scheduled interviews with the private attorneys and judges with whom the recipients wished the monitors to speak. This policy seriously reduced the reliability of the reported results since some programs might not have included interviews with relevant members of the legal community holding unfavorable opinions. LSC has decided, therefore, that all interviews are to be scheduled by its monitors. (See LSC's May 9, 1986 Response to the House Judiciary Subcommittee, Tab 1 at p. 36.)*

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* CLERK'S NOTE: Due to their length, Tabs 1 and 2 have not been reprinted. They are maintained in the files of the Subcommittee.

The Corporation's monitoring gathers much less information regarding whether programs have the support of other elements of the local communities they serve since we cannot survey clients, and it would be unreasonable to attempt to find and interview a broad and representative sample of "community leaders." We do interview client board members and some of the organizations which appoint members to the boards of directors, but we expect it will always be very difficult to say much more than th-t there is a wide range of relationships between community organizations and programs -- from complete alliance to apparent total warfare (in a few cases, the same program appears to have both extremes of relationships with different leaders and organizations).

Question. When was the last time that the Corporation prepared a fact book? When can we expect a new fact book will be prepared? Will you please provide the Committee with a copy of the most recent fact book?

Answer. The last fact book was issued in 1985. The Corporation is currently pursuing what it hopes will be significant improvements in the quality of its data and the usefulness of various summaries. A new version of the fact book should be available this year. We would appreciate any suggestions regarding the Subcommittee's interests as LSC attempts to improve the scope and utility of its data summaries.

Lobbying Regulation: Private Funds and Training.

Question. Your 1987 proposed regulations prohibit using private funds during training to disseminate information about particular public policies even though section 1007(b)(6) of the LSC Act permits dissemination of such information. Thus, programs could not use their private funds to participate in training events for non-lawyers or non-paralegals and provide information about existing Aging, social service agencies, and the like on issues directly affecting eligible clients.

* On what basis do you justify imposing restrictions on private funds that are not in the LSC Act?

* Why did LSC continue this restriction on training when you removed other restrictions contained in the 1986 regulations?

Answer. Since the appropriations acts by their terms restrict only federally-funded activities and not privately funded activities, appropriations language alone has not directly enjoined recipients from using private funds for purposes prohibited in the appropriations acts. Nonetheless, no Congressional statement or legislative enactment has, over the past decade, indicated that Congress intended to retreat from its plainly expressed determination in §1010(c) that federal funds and private funds ought to be treated alike. This conclusion constituted a carefully considered policy that clear separation must be maintained between permissible and impermissible activities. See, generally, Legal Services Corporation Act Amendments of 1977: Hearings before the Subcommittee on Employment, Poverty, and Migratory Labor of the Senate Comm. on Human Resources, 95th Cong., 1st Sess. (1977); Legal Services Corporation Act; Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 95th Cong., 1st Sess. (1977). The §1010(c) prohibition is part of the overall Congressional scheme to ensure that legal services programs are kept free from political influences. See §§ 1001(5), 1006(b)(5)(B), and 1007(a) of the LSC Act. What the Corporation relies on, of course, is the authority delegated by Congress to regulate the manner in which its recipients use private funds consistently with the LSC Act. Accordingly, in order to give effect to the intent of Congress, restrictions contained in the appropriations acts have been proposed by regulation to encompass private funds.

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* CLERK'S NOTE: Due to their length, Tabs 1 and 2 have not been reprinted. They are maintained in the files of the Subcommittee.

LSC also has a legitimate concern -- grounded in experience -- that grantees could seek to allocate LSC funds to cover obligations such as rent and utilities, while allocating non-LSC funds for restricted activities. See Minutes of Legal Services Corporation Operations and Regulations Committee, January 9, 1987 at 2-6. A fiction which would allocate LSC funds for overhead obligations rather than the provision of legal assistance to eligible clients clearly would thwart the fundamental purposes and provisions of the LSC Act. To prevent such inconsistent and imbalanced use of resources the Corporation generally disallows the use of private funds for activities proscribed by the LSC Act and appropriations bills. Exceptions, however, are delineated in §1612.13.

LSC has continued the restrictions on training for two reasons. First, in 1983 the General Accounting Office (GAO) rendered an opinion that the Corporation and its recipients had violated restrictions imposed on training and coalition-building activities. See 62 Comp. Gen. 654 (1983). The findings of that report were confirmed in GAO testimony before the Senate Labor and Human Resources Committee, April 11, 1984. See Oversight of the Legal Services Corporation, 1984: Hearing Before the Senate Committee on Labor and Human Resources, 98th Cong., 2d Sess. (1984); 49 Fed. Reg. 22651 (1984); 51 Fed. Reg. 27543 (1986). The GAO report found, in part, that violations reached such a level in 1981 that there was a reduction in the number of cases handled by some program attorneys. GAO strongly recommended that the Corporation take action to amend its lobbying regulations to prevent further such abuses.

Second, Congress has consistently included language prohibiting the dissemination of information about public policy in every appropriations act since 1984. Congressional action has clearly been taken in consonance with the concerns expressed by GAO and the Senate Committee. LSC, in sum, has felt obliged to follow the guidance offered by Congressional precedent and the underlying GAO findings.

Lobbying Regulation: Dues Payments With Private Funds.

Question. Section 1612.13(c) could be interpreted to give

LSC the authority to determine the amount of private funds that could be used to pay dues (because of the adjective "reasonable" before private funds) and to impose all LSC restrictions on private funds even though only some restrictions apply.

* Are you planning on regulating the amount of private funds paid for dues?

* If so, what is your authority for such regulation?

* Will you permit organizations using recipient private funds for dues to spend those funds on activities on which recipients could spend those funds directly?

Answer. LSC plans to monitor whether a recipient has paid a reasonable amount of its private funds in annual dues to a 501(c)(3) organization based on §1007(a)(5) of the LSC Act, which provides that no funds made available to recipients be used at any time directly or indirectly to influence the issuance, amendment, or revocation of legislation. The restriction is made applicable to private funds via §1010(c) of the LSC Act. Because of §1010(c) and §1007(a)(5), the use of private funds for dues to organizations that LSC has determined are engaged in prohibited legislative activities is prohibited unless the dues are not used for proscribed activities.

LSC is attempting to prevent funds that a recipient may not use directly for restricted activities from being turned into dues to an organization that in turn uses the funds indirectly for such activities. Therefore, as a practical matter, in order for LSC to ensure that the proscriptions of §1010(c) and §1007(a)(5) are not being violated, LSC must be able to monitor whether dues are, derivatively, funding prohibited activities.

The restriction on the use of private funds for dues is basically the same as the restriction on the use of LSC funds for dues except that the amount restricted is different. See §1612.3(a) of Proposed Rule presently under reprogramming review.

As to the use of a recipient's private funds on otherwise permissible activities, organizations that have received private funds from recipients may devote those funds for any purpose not otherwise restricted. As reinforced by the Preamble, the regulation permits a recipient to use private funds to pay reasonable annual dues to 501(c)(3) organizations as long as the funds are not used for purposes prohibited by the Act and regulations adopted pursuant to it. It does not regulate how private funds may be otherwise spent.

Lobbying Regulation: Existing Obligations of Recipients.

Question. Some recipients have obtained private funds for uses that will now be restricted by your proposed regulations. Such recipients should not be inhibited in meeting their existing commitments to private funds.

- Would you be willing to add an explanation in the Preamble that would permit programs to use private funds to meet contractual or other existing obligations into which they have previously entered when such activities were not explicitly restricted?

Answer. It is difficult to understand under what circumstances earlier contracts contemplated terms prohibited by the pending regulation. Part 1612 as passed by the LSC Board on January 30, 1987, adds no new restrictions and includes three new exceptions to the general restriction against the use of private funds.

Although LSC has been enjoined from implementing or enforcing the published 1984 and 1986 lobbying regulations, 49 Fed. Reg. 22651 and 51 Fed. Reg. 27539, with FY 1986 or 1987 funds, recipients still have been bound by the regulations and the restrictive language in the annual appropriations act. As discussed above, the LSC Board has consistently applied appropriations act restrictions to private funds via §1010(c). Part 1610 also proscribes the use of private funds for uses prohibited in the LSC Act and regulations. Thus, no contracts should be threatened by the promulgation of Part 1612. In the event of hardship, of course, the Corporation could be expected to review its general prohibition.

Lobbying Regulation: Administrative Representation.

Question. Your proposed regulation and the 1986 regulation defines "legislative" and "legislative activities" to include administrative representation and rulemaking. The rider draws a distinction between legislative activities and administrative representation including rulemaking. Administrative advocacy can be provided on a particular application, claim or case while lobbying activity is more restricted.

- Why have you continued these definitions when the rider clearly draws a distinction between administrative and legislative advocacy?

Answer. Mainly for historical reasons, the term "legislative activities," defined as including administrative, legislative, and grass-roots lobbying, has been used in Part 1612 as a general term to include the different types of political activities covered by the rider. The use of the word "legislative" in "legislative activities" is not meant to indicate that "administrative lobbying" is the same as "legislative lobbying." The definitions of both "legislative lobbying" and "administrative lobbying" track very closely the language in the rider, clearly indicating that they are two different activities. In addition, Part 1612 provides that administrative representation is allowed on a particular application claim or case (see §1612.5(a)). This is the same exemption delineated in the rider. Thus, the use of the word "legislative" in "legislative activities" has no more significance than to provide a general term to include the various types of lobbying proscribed in the rider. Its use within Part 1612 does not conflict with either the language or intent of the rider.

The authority for restrictions on certain rulemaking activities is rooted in Pub. L. 99-180, which states that funds may not be used to influence "any decision" by agencies. "Any decision" includes rulemaking decisions. The restrictions on lobbying activities related to agency rulemaking actions in Part 1612 are the same as in the rider. Likewise, the exceptions to the restrictions are the same in both the rider and the regulation. [*]

The inclusion of rulemaking in the definition of "legislation" is simply a recognition that rulemaking is a form of legislation that may be formulated by both legislative and administrative bodies. If the rule is promulgated by an agency it will be controlled by the restrictions in the rider and lobbying regulation directed toward administrative lobbying. If it is enacted by a legislative body, it will be regulated by the restrictions in the rider and lobbying regulation dealing with legislative lobbying. There is thus no conflict between the regulation and the rider.

Lobbying Regulation: Attending Coalition Meetings.

Question. Neither the LSC Act nor the rider prohibits recipient staff from attending coalition meetings. Your 1986 regulations prohibited attending such meetings with both LSC and private funds.

* Why should recipient personnel be prohibited from attending such meetings to obtain relevant information and provide information to attendees on how pending legislation or regulations will affect eligible clients?

Answer. Recent history has strongly influenced development of this regulatory provision. The GAO had strongly criticized the practice of using LSC funds to attend coalition meetings and recommended in a 1983 report to Congress that the Corporation take appropriate action to amend its lobbying regulations to prohibit the expenditure of funds for such activity. 62 Comp. Gen. 654 (1983). See also 49 Fed. Reg. 22651 (May 31, 1984), and 51 Fed. Reg. 27543 (Aug. 1, 1986). In consequence, when considering the promulgation of the 1986 lobbying regulation, the LSC Board determined that the only way to stop abuse in this area was to create an outright prohibition on attending such meetings. 51 Fed. Reg. 27543. However, the Board has modified its earlier, absolute restriction in the 1987 amended regulation now pending before your committee. Section 1612.3(f) restricts use of funds for attendance at coalition meetings only when "a principal purpose of the meeting is to discuss or engage in legislative or political activities."

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[*] The rider provides that no LSC funds may be used in rulemaking activities:

> except when legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights or responsibilities.

Pub. L. 99-180. Part 1612 mirrors this language by providing that an employee of a recipient:

> may provide legal assistance to a current eligible client in a rulemaking proceeding, consistent with the practices of the particular administrative official or body on a particular application, claim or case directly involving the client's legal rights or responsibilities.

45 C.F.R. §1612.5(b).

Lobbying Regulation: Publications.

Question. Section 1612.7 of the regulation continues to prohibit circulation of publications with LSC funds to the public or clients generally unless the reference to pending or proposed legislation is incidental to the topic of the publication. Neither the LSC Act nor the rider limit to whom publications can be sent. The limitations are on "publicity or propaganda."

* On what authority do you restrict to whom publications can be sent?

* Why is such a restriction necessary?

Answer. Because Corporation resources are limited, the LSC Board of Directors made a funding policy decision that LSC funds are to be used for distribution of certain publications only to "the Corporation, recipients, recipient staff and Board members, private attorneys representing eligible clients, and eligible clients currently represented by a recipient with regard to a matter directly related to the legislation, as opposed to the public at large, or eligible clients generally." See 45 C.F.R. §1612.7(b)(5). The LSC Board's foremost priority has consistently been to ensure that scarce LSC funds are used in the representation of eligible clients who request representation on a specific matter -- direct representation -- rather than using limited resources for other collateral concerns. See Preamble to Final Rule, 51 Fed. Reg. 27545 (1986); Preamble to Final Rule, 49 Fed. Reg. 22654 (1984). The LSC Board has here exercised its discretion to make such funding policy decisions. The Board's informed and reasoned approach is based on a full deliberative process. As long as such decisions are not in conflict with the LSC Act or any LSC appropriations bill, they should be accorded considerable deference. See United Automobile Areospace & Agricultural Implement Workers v. Donovan, 746 F.2d 855, 861 (D.C. Cir. 1984), cert. denied, 106 S. Ct. 81 (1985).

Lobbying Regulation: Constitutional Issues.

Question. Several recent Supreme Court cases call into question whether private funds used for First Amendment activities, such as lobbying, can be restricted. Regan v. Taxation with Representation, 461 U.S. 540 (1983), **established that** lobbying is a constitutionally protected activity **under the** First Amendment, and that, absent a **compelling state interest**, the Congress cannot enact legislation **which either** directly or indirectly dissuades this constitutionally protected speech. In previous cases where the government has sought to restrict the non-federally funded and constitutionally protected activities of non-profit organizations that receive federal grants, the courts have struck down these laws if the state could achieve its end by less drastic means, for example, by requiring "segregation." See F.C.C. v. League of Women Voters of California, 468 U.S. 364 (1984) and Planned Parenthood of Central and Northern Arizona v. Arizona, 789 F.2d 1348 (9th Cir. 1986) aff'd, 107 S.Ct. 391 (1986).

* In light of these decisions, should not LSC be extremely careful in restricting private funds?

* Why do you insist upon imposing more onerous restrictions on private funds than are imposed by the LSC Act?

* In your view, is there any difference between the statutes struck down in the two cases mentioned above and your new regulation's attempt to restrict private activities?

* Is it your view that Section 1010(c) of the LSC Act applies to all private funds, regardless of the purpose for which they are given? If not, where do you draw distinctions between funds that are regulated and funds that are not?

Answer. Congress not only has the power to determine whether or not to provide funding for the general welfare, it also has broad discretion to determine the purpose, terms, and conditions under which grants are made. Buckley v. Valeo, 424 U.S. 1, 90-91 (1976); Cincinnati Soap Co. v. United States, 301 U.S. 308, 321-22 (1937). One condition on the use of federal funds by LSC recipients was provided in §1010(c) of the LSC Act, which similarly restricted the use of private funds. Whether this restriction was "'bad,' 'unwise,' or 'unworkable'. . . is irrelevant; Congress concluded that the means are 'necessary and proper' to promote the general welfare." Buckley v. Valeo, supra, at 91. Clearly, as LSC may not question the Congressional determination, LSC must implement Congressional intent through its delegated rulemaking power.

Even if, arguendo, LSC were in a position to question the constitutional validity of §1010(c), the cases cited in your question regarding the constitutionality of governmental restrictions on protected activities supported by private funds are not applicable to LSC. Instead, as listed, infra, LSC falls squarely within the Hatch Act cases explicitly excepted from the ruling in F.C.C. v. League of Women Voters of California, 468 U.S. 364, 400 n. 27 (1984).

The general rule, as stated above, is that Congress can place conditions upon a grant of federal money. Buckley, v. Valeo, supra, at 90-91. League of Women Voters, however, recognizes certain exceptions to Buckley. In League of Women Voters, the Court found unconstitutional a statutory provision that proscribed editorializing by any station receiving federal broadcasting grants. The Court expressed concern that all editorializing was prohibited, even that financed by private funds. Id. at 400. The Court suggested that if a statute allowed a station to establish an affiliate which could editorialize with nonfederal funds, it would satisfy constitutional scrutiny.

The Court distinguished in several ways its prior decisions upholding provisions of the Hatch Act against constitutional challenges from the League of Women Voters case. First, it said that the Hatch Act proscribed only certain political activities by federal employees. All expression on public affairs, personalities and matters of public interest were not proscribed. Second, it said that the restriction was grounded in the government's substantial and important interest in ensuring effective job performance by federal employees. Third, the Court found that the restrictions resulted from a century of governmental experience with less restrictive means. Id. at 400 n. 27.

LSC falls well within the rationale of the Hatch Act exceptions. First, the United States District Court for the District of Columbia specifically relied upon the Supreme Court's interpretations of the Hatch Act as direct authority to uphold LSC Act restrictions on political activity by employees of LSC's recipients. Smith v. Ehrlich, 430 F.Supp. 818 (D.D.C. 1976). Second, LSC restrictions in Part 1625 do not proscribe all political activity by Corporation and recipient employees, but only those determined to be in conflict with the proper performance of legal services activities. Third, the LSC restrictions are grounded in a substantial and important governmental interest in ensuring job performance by its own employees, and, finally, the restrictions have evolved from years of government experience with less restrictive means and the abuses that can occur. Smith v. Ehrlich, supra, 430 F. Supp. at 821. ("[T]here is ample evidence that Congress fully weighed the dangers of both partisan and nonpartisan political activity . . . . Congress looked to practice, history and changing educational, social and economic conditions".) See, generally, 119 CONG. REC. S. 40474 (daily ed. Dec. 10, 1973); 119 CONG. REC. S. 41068 (daily ed. Dec. 12, 1973) (statement of Senator Mansfield); 119 CONG. REC. H. 20685 (daily ed. June 21, 1973) (statement of Reps. Perkins and Long). See Civil Service Commission v. National Ass'n of Letter Carriers, 413 U.S. 548, (1973), and United Public Workers v. Mitchell, 330 U.S. 75 (1974).

As to the other case cited in your question, the majority opinion in Regan v. Taxation with Representation, 461 U.S. 540 (1983), did not analyze whether the right to lobby is a fundamental right; rather it avoided the issue by finding instead that a refusal to fund lobbying activities is not a violation of any First Amendment rights. Id. at 551. Only the concurring opinion states that lobbying is protected by the First Amendment. Id. at 552. The Court in Regan never reached the issue whether a compelling state interest must be shown before Congress may enact legislation that infringes on lobbying. The Regan decision concluded that no constitutional right had been violated. Id. at 551.

You asked whether §1010(c) applies to all private funds, regardless of the purpose for which they are given. Section 1010(c) does apply to all private funds received by a recipient. The section provides that:

> any funds . . . received [by a recipient from a source other than the Corporation] for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this title.

42 U.S.C. 2996j. Part 1610, implementing §1010(c), provides that:

> Funds received from another source for the provision of legal assistance shall not be used by a recipient for purposes prohibited by the Act or Corporation regulations, unless such use is authorized by §1610.3.*

45 C.F.R. §1610.2.

In response to your last question, we submit that the expression "for the provision of legal assistance" may be read as a qualifying term used in both the Act and Rule 1610. The definitions of "legal assistance" in both the Act and Part 1610 are almost identical. The Act defines the term as "the provision of any legal services consistent with the purposes and provisions of this title." 45 U.S.C. §29996(a), §1002(5). In the Rule, "legal assistance" is defined as "the provision of any legal services consistent with the purposes and provisions of the Act or other applicable law." Both definitions are broad enough to encompass all activities conducted by a recipient, even those that only have an indirect effect. Since virtually all activities performed by LSC recipients should be directed toward providing either direct or indirect legal assistance services, all private funds received by them are subject to §1010(c).

AUDIT OF THE CORPORATION

The accounting firm of Peat, Marwick and Mitchell conducted an audit of the Corporation for the fiscal year ending September 30, 1986, and submitted several recommendations to the Corporation in the areas of financial operations, fixed asset recordkeeping, systems development and program changes, and off-site storage of computer tapes. On February 13, the Comptroller in a memo to the Board and the President outlined plans to follow up on these recommendations.

Question. With the departure from the Corporation of the Comptroller, what is being done to implement these recommendations? One of the problems identified was the need for additional skilled accounting personnel.

Answer. (In four parts)

A. Financial Operations

Shortly after the former Comptroller resigned, the Corporation appointed an Acting Comptroller who died unexpectedly. A successor was then named as Acting Comptroller. Prior to the new Acting Comptroller's entry into the Comptroller's Office on April 14, few measures were taken to correct internal control weaknesses. Despite earlier deficiencies, the Comptroller's Office has now effectively and energetically improved the functioning of that office. To correct weaknesses in oversight and internal control of payroll, responsibilities for data accumulation and general ledger payroll distribution have been assigned to two separate staff members. This change immediately corrected one concern about internal control noted by Peat, Marwick and Mitchell and has had the effect of improving the work distribution of the Comptroller's Office.

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*/ The §1610.3 exceptions are not relevant here.

The reconciliation of all LSC bank accounts are up-to-date with the exception of details in the payroll account. By June 19, assessments and updates in the payroll account will be completed. Again, the new Acting Comptroller has resolved, in short order, a basic accounting matter that should have been addressed far sooner.

B. Fixed Asset Recordkeeping

A program for recordkeeping was purchased by the former Comptroller from a software company. However, the program apparently was never implemented. The necessary assessment of the software by Management Services and the Comptroller's Office has now begun.

C. Systems Development and Program Changes

An updated Financial Management System has been installed along with a new report-writing program. The Comptroller's Office has received training and the program manuals. With these tools provided, the Corporation now appears to be on firm footing with its Financial Management System.

D. Off-site Storage of Computer Tapes

A three-step procedure for off-site storage and archiving of appropriate computer tapes has been implemented.

1. Each Monday morning the weekend back-up tape is taken to a safe deposit box at Riggs National Bank for storage. The prior week tape is retrieved and placed back into the system.

2. Each evening a back-up of the system is completed and the computer tapes are stored in a fire-proof safe. LSC now maintains a minimum of three days of back-up tapes. This procedure is intended to protect us from losing data if the Corporation should experience a disk failure.

3. Each month after closing the books, a back-up tape is placed in the bank for the purpose of archiving.

Question. How many employees are there currently in the Office of the Comptroller?

Answer. There are six full-time personnel and one additional contract employee.

Question. Why isn't this division staffed at its authorized level (14)?

Answer. The full, authorized level, importantly, was set when the Corporation had ten divisions within Headquarters and nine Regional Offices. At the present time the earlier ceiling appears entirely too high for LSC's reduced size. With Corporate reorganization and centralization a reduced staff is appropriate. Nonetheless, the Corporation does intend to make professional and administrative additions to the Comptroller's Office in the near future.

Question. How many additional staff have been hired since Peat, Marwick and Mitchell identified this need?

Answer. Because of the untimely death of a member of the staff and the simultaneous departure of other personnel, there are temporarily two fewer staff members than when Peat, Marwick and Mitchell conducted the year-end audit. Nonetheless, the

Corporation is carefully yet expeditiously moving to fill all vacancies.

Question. Does the Corporation currently have a "Budget Officer"?

Answer. At the present time, largely because of the exigencies cited above, the Acting Comptroller himself provides the reporting and other services of the Budget Office. The Corporation, however, acutely recognizes the importance of the budget functions and has begun the process leading to selection of a new Budget Officer.

COMPTROLLER POSITION AT THE CORPORATION

Question. Has the position of Comptroller at the Corporation been filled?

Answer. After departure of the former Comptroller and the untimely death of his successor, David Richardson was named as Acting Comptroller. Mr. Richardson had arrived at the Office of the Comptroller to supervise the accounting functions of the Corporation and to serve as assistant to Mr. Clark prior to his death.

Question. If so, is the individual a full-time permanent employee of the Corporation?

Answer. Mr. Richardson, now Acting Comptroller, is a full-time employee working pursuant to an employment contract. The

Corporation intends to seek applicants for the position of Comptroller under its usual competitive personnel process.

Question. It is the Committee's understanding that the title of the position has been changed from "Comptroller" to "Controller." Is this information correct? If so, why has the spelling been changed?

Answer. The title remains "Comptroller." Any orthographical deviation from this usage, however correct, e.g. "Controller" is not the official spelling used by the Corporation.

COMPUTER PROBLEMS

It is the Committee's understanding that you have had problems with the computer software in both the Case Service Report and the Financial Management area and that in fact for a nine-month period, the Corporation was unable to produce a financial ledger.

Question. What steps have been taken to correct these problems? Have they been resolved?

Answer. It is true that until very recently there was a failure in the Comptroller's Office to address rigorously the necessity of implementing a regular report of finances. An updated financial management system has now been installed along with a new report-writing program. The Comptroller's Office has been provided with initial training and has received the appropriate program manuals. Furnished with this assistance, the Comptroller's staff is confident that the system's development will enable LSC to produce accurate financial reports with promptness.

Question. Are you now able to produce monthly and quarterly financial statements? Please provide the latest statement to the Subcommittee.

Answer. Yes, the Comptroller's Office is now able to generate monthly and quarterly financial statements. While LSC had previously been capable of providing monthly and quarterly financial reports, those important tasks had not been regularly performed until appointment of the present Acting Comptroller. The reiterated concerns of the Board of Directors have now been largely alleviated as the Comptroller's Office is producing quarterly and monthly financial statements. LSC's mid-year review has been completed and distributed to each Board Member. Also, April financial statements have been completed and distributed. Copies of each are attached.

LEGAL SERVICES CORPORATION
FY 1987 CONSOLIDATED OPERATING BUDGET - MID-YEAR REVIEW OF EXPENES TO BUDGET
March 31, 1987

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	31-MAR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
I. DELIVERY OF LEGAL ASSISTANCE	$283,530,949	$300,000	$283,830,949	$270,654,269	$13,176,680
A. FIELD PROGRAMS	280,498,180	0	280,498,180	269,468,885	11,029,295
1. Basic Field Programs	263,166,634	0	263,166,634	254,558,246	8,608,388
2. Native American Programs and Components	7,319,775	0	7,319,775	7,102,290	217,485
3. Migrant Programs and Components	10,011,771	0	10,011,771	7,808,349	2,203,422
4. Reserve for Special Adjustments	0	0	0	0	0
B. PROGRAM DEVELOPMENT	1,917,944	300,000	2,217,944	120,559	2,097,385
C. SUPPLEMENTAL SERVICE PROVISION	1,114,825	0	1,114,825	1,064,825	50,000
1. Law School Clinics & Recruitment	0	0	0	0	0
2. Supplemental Field Programs	1,064,825	0	1,064,825	1,064,825	0
3. R. H. Smith Fellowships	50,000	0	50,000	0	50,000
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	19,913,738	0	19,913,738	15,350,077	4,563,661
A. TRAINING AND TECHNICAL ASSISTANCE	1,377,658	0	1,377,658	623,964	0 753,694
1. Training Development & Tech. Assistance	753,694	0	753,694		753,694
2. Regional Training Centers	623,964	0	623,964	623,964	0
B. OTHER SUPPORT	18,536,080	0	18,536,080	14,726,113	3,809,967
1. National Support	7,528,218	0	7,528,218	5,874,838	1,653,380
2. State Support	7,842,866	0	7,842,866	7,722,280	120,586
3. Clearinghouse	1,065,022	0	1,065,022	278,603	786,419
4. CALR Grants	510,444	0	510,444	510,444	0
5. Special Elderly Programs	50,000	0	50,000	50,000	0
6. Special Law School Grants	1,539,530	0	1,539,530	289,948	1,249,582
III. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,889,400	($300,000)	$11,589,400	$4,522,690	7,066,710
A. MANAGEMENT & ADMINISTRATION					
1. Board of Directors	137,534	0	137,534	66,945	70,589
2. Executive Office	370,755	0	370,755	148,387	222,368
3. General Counsel	1,260,188	0	1,260,188	308,368	951,820
4. Policy Development & Communications	654,784	0	654,784	379,654	275,130
5. Management Services	2,615,373	0	2,615,373	1,180,344	1,435,029
6. Monitoring, Audit & Compliance	4,881,998	0	4,881,998	1,900,625	2,981,373
7. Comptroller	405,408	0	405,408	199,340	206,068
8. Field Services	878,160	0	878,160	339,027	539,133
9. Unallocated Reserve	685,200	(300,000)	385,200	0	385,200
TOTAL BUDGETED FUNDS	315,334,087	0	315,334,087	290,527,036	24,807,051

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	31-MAR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
OTHER AVAILABLE FUNDS					
Grant recoveries & refunds	0	0	0	0	0
Investment Account	0	0	0	0	0
TOTAL FUNDS	$315,334,087	$0	$315,334,087	$290,527,036	$24,807,051

SUMMARY BY DIVISION 31-MAR-87

OPERATING LSC OFFICE	FY87 BUDGET	3/31/87 EXPENSES	UNEXPENDED BALANCE	
BOARD OF DIRECTORS	137,534	66,945	70,589	0.4867
EXECUTIVE OFFICE	370,755	148,387	222,368	0.4002
GENERAL COUNSEL	1,260,188	308,368	951,820	0.2446
POLICY DEVELOP. & COMMS.	654,784	379,654	275,130	0.5798
MANAGEMENT SERVICES	2,615,373	1,180,344	1,435,029	0.4513
MONITOR., AUDIT & COMPL.	4,881,998	1,900,625	2,981,373	0.3893
COMPTROLLER	405,408	199,340	206,068	0.4917
FIELD SERVICES	878,160	339,027	539,133	0.3860
UNALLOCATED RESERVE	385,200	0	385,200	
	11,589,400	4,522,690	7,066,710	0.3902

LEGAL SERVICES CORPORATIONS
FY 1987 CONSOLIDATED OPERATING BUDGET - MID-YEAR REVIEW OF EXPENES TO BUDGET
APRIL 30, 1987

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	30-APR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
I. DELIVERY OF LEGAL ASSISTANCE	$283,530,949	$300,000	$283,830,949	$273,896,672	$9,934,277
A. FIELD PROGRAMS	280,498,180	0	280,498,180	272,716,219	7,781,961
1. Basic Field Programs	263,166,634	0	263,166,634	257,813,301	5,353,333
2. Native American Programs and Components	7,319,775	0	7,319,775	6,918,299	401,476
3. Migrant Programs and Components	10,011,771	0	10,011,771	7,984,619	2,027,152
4. Reserve for Special Adjustments	0	0	0	0	0
B. PROGRAM DEVELOPMENT	1,917,944	300,000	2,217,944	145,479	2,072,465
C. SUPPLEMENTAL SERVICE PROVISION	1,114,825	0	1,114,825	1,034,974	79,851
1. Law School Clinics & Recruitment	0	0	0	0	0
2. Supplemental Field Programs	1,064,825	0	1,064,825	1,034,825	30,000
3. R. H. Smith Fellowships	50,000	0	50,000	149	49,851
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	19,913,738	0	19,913,738	15,693,766	4,219,972
					0
A. TRAINING AND TECHNICAL ASSISTANCE	1,377,658	0	1,377,658	623,964	753,694
1. Training Development & Tech. Assistance	753,694	0	753,694	0	753,694
2. Regional Training Centers	623,964	0	623,964	623,964	0
B. OTHER SUPPORT	18,536,080	0	18,536,080	15,069,802	3,466,278
1. National Support	7,528,218	0	7,528,218	5,996,733	1,531,485
2. State Support	7,842,866	0	7,842,866	7,722,280	120,586
3. Clearinghouse	1,065,022	0	1,065,022	350,686	714,336
4. CALR Grants	510,444	0	510,444	510,444	0
5. Special Elderly Programs	50,000	0	50,000	50,000	0
6. Special Law School Grants	1,539,530	0	1,539,530	439,659	1,099,871
III. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,889,400	($300,000)	$11,589,400	$5,481,935	6,107,465
A. MANAGEMENT & ADMINISTRATION					
1. Board of Directors	137,534	0	137,534	81,997	55,537
2. Executive Office	370,755	0	370,755	182,472	188,283
3. General Counsel	1,260,188	0	1,260,188	424,863	835,325
4. Policy Development & Communications	654,784	0	654,784	425,330	229,454
5. Management Services	2,615,373	0	2,615,373	1,457,159	1,158,214
6. Monitoring, Audit & Compliance	4,881,998	0	4,881,998	2,281,877	2,600,121
7. Comptroller	405,408	0	405,408	227,830	177,578
8. Field Services	878,160	0	878,160	400,407	477,753
9. Unallocated Reserve	685,200	(300,000)	385,200	0	385,200
TOTAL BUDGETED FUNDS	315,334,087	0	315,334,087	295,072,373	20,261,714

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	30-APR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
OTHER AVAILABLE FUNDS					
Grant recoveries & refunds	0	0	0	0	0
Investment Account	0	0	0	0	0
TOTAL FUNDS	$315,334,087	$0	$315,334,087	$295,072,373	$20,261,714

LEGAL SERVICES CORPORATIONS
FY 1987 CONSOLIDATED OPERATING BUDGET - SEVEN MONTH REVIEW OF EXPENES TO BUDGET
APRIL 30, 1987

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	30-APR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
I. DELIVERY OF LEGAL ASSISTANCE	$283,530,949	$300,000	$283,830,949	$273,896,672	$9,934,277
A. FIELD PROGRAMS	280,498,180	0	280,498,180	272,716,219	7,781,961
1. Basic Field Programs	263,166,634	0	263,166,634	257,813,301	5,353,333
2. Native American Programs and Components	7,319,775	0	7,319,775	6,918,299	401,476
3. Migrant Programs and Components	10,011,771	0	10,011,771	7,984,619	2,027,152
4. Reserve for Special Adjustments	0	0	0	0	0
B. PROGRAM DEVELOPMENT	1,917,944	300,000	2,217,944	145,479	2,072,465
C. SUPPLEMENTAL SERVICE PROVISION	1,114,825	0	1,114,825	1,034,974	79,851
1. Law School Clinics & Recruitment	0	0	0	0	0
2. Supplemental Field Programs	1,064,825	0	1,064,825	1,034,825	30,000
3. R. H. Smith Fellowships	50,000	0	50,000	149	49,851
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	19,913,738	0	19,913,738	15,693,786	4,219,972
A. TRAINING AND TECHNICAL ASSISTANCE	1,377,658	0	1,377,658	623,964	0 753,694
1. Training Development & Tech. Assistance	753,694	0	753,694	0	753,694
2. Regional Training Centers	623,964	0	623,964	623,964	0
B. OTHER SUPPORT	18,536,080	0	18,536,080	15,069,802	3,466,278
1. National Support	7,528,218	0	7,528,218	5,996,733	1,531,485
2. State Support	7,842,866	0	7,842,866	7,722,280	120,586
3. Clearinghouse	1,065,022	0	1,065,022	350,686	714,336
4. CALR Grants	510,444	0	510,444	510,444	0
5. Special Elderly Programs	50,000	0	50,000	50,000	0
6. Special Law School Grants	1,539,530	0	1,539,530	439,659	1,099,871
III. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,889,400	($300,000)	$11,589,400	$5,481,935	6,107,465
A. MANAGEMENT & ADMINISTRATION					
1. Board of Directors	137,534	0	137,534	81,997	55,537
2. Executive Office	370,755	0	370,755	182,472	188,283
3. General Counsel	1,260,188	0	1,260,188	424,863	835,325
4. Policy Development & Communications	654,784	0	654,784	425,330	229,454
5. Management Services	2,615,373	0	2,615,373	1,457,159	1,158,214
6. Monitoring, Audit & Compliance	4,881,998	0	4,881,998	2,281,877	2,600,121
7. Comptroller	405,408	0	405,408	227,830	177,578
8. Field Services	878,160	0	878,160	400,407	477,753
9. Unallocated Reserve	685,200	(300,000)	385,200	0	385,200
TOTAL BUDGETED FUNDS	315,334,087	0	315,334,087	295,072,373	20,261,714

	(1) FY 1987 CONSOLIDATED OPERATING BUDGET	(2) REQUESTED DISTRIBUTION OF UNALLOCATED RESERVE	(3) REQUESTED FY 1987 CONSOLIDATED OPERATING BUDGET	30-APR-87 EXPENSES TO-DATE	REMAINING UNENCUMBERED BALANCE
OTHER AVAILABLE FUNDS					
Grant recoveries & refunds	0	0	0	0	0
Investment Account	0	0	0	0	0
TOTAL FUNDS	$315,334,087	$0	$315,334,087	$295,072,373	$20,261,714

SUMMARY BY DIVISION 30-APR-87

OPERATING LSC OFFICE	FY87 BUDGET	4/30/87 EXPENSES	UNEXPENDED BALANCE	
BOARD OF DIRECTORS	137,534	81,997	55,537	0.5961
EXECUTIVE OFFICE	370,755	182,472	188,283	0.4921
GENERAL COUNSEL	1,260,188	424,863	835,325	0.3371
POLICY DEVELOP. & COMMS.	654,784	425,330	229,454	0.6495
MANAGEMENT SERVICES	2,615,373	1,457,159	1,158,214	0.5571
MONITOR., AUDIT & COMPL.	4,881,998	2,281,877	2,600,121	0.4674
COMPTROLLER	405,408	227,830	177,578	0.5619
FIELD SERVICES	878,160	400,407	477,753	0.4559
UNALLOCATED RESERVE	385,200	0	385,200	
	11,589,400	5,481,935	6,107,465	0.4730

Question:

The Corporation has recently completed a study of the migrant population. I understand that the experts who have reviewed the study have strongly questioned both the validity of the study and certain policy changes built into the design of the study (for example, the fact that LSC excluded migrant dependents from the study).

(A) Is the Corporation considering basing its 1988 funding allocation among migrant grantees on this study?

(B) Why did LSC exclude migrant dependents from the State-by-State distribution formula in the study?

Answer:

(A) In a word, no. The past ten years have been characterized by significant changes in our understanding of the needs and characteristics of migrant workers. Experts both inside and out of Government have drawn attention to new developments and Congress itself, through enactment of the Simpson-Mazzoli Immigration Bill, as well as through other means, has indicated its recognition of fundamentally altered circumstances. In keeping with manifest Congressional concern over the issue of migrants and their changed status, LSC commissioned a study to re-evaluate the status of migrant workers with respect to legal services. Following completion of the study, the Corporation repeatedly invited public comment and announced its intention of involving all segments of the public in any action proposed to be taken in consequence of the study it had commissioned. So far, reaction to the study has represented a range of viewpoints both positive and negative. Regarding funding, the Corporation has already submitted its 1988 request to Congress. This budget was submitted before the Martin/Holt migrant study was completed and was unaffected by the study's findings. Of course, no action will be taken on the study until the period for public comment has been closed and comments have been closely considered.

(B) Dependents are considered by the study along with workers. The Corporation and the authors of the study agreed to pattern the study's definition of migrants on the most sound and widely accepted operational definitions available in the literature. For such purposes the Department of Agriculture's Economic Research Service (USDA-ERS) definition was accepted as the most commonly used as well as being widely recognized as an objective operational definition.

Counting migrants and dependents is described as a two-step process by the researchers. Available data sources count only workers (including dependents who also perform farmwork), and there are no accurate data on dependents. The study, then, first counts workers. The second step of the process involves a statistical estimation of dependents. Multiplying the count of individual workers by a factor of 1.85 yields, in the opinion of the researchers, an accurate estimate of dependents. Professor Martin further states that all indications lead to the conclusion that this factor is generalizable across states. That is, multiplying any single state migrant count by 1.85 would yield an accurate estimate of migrants and dependents in each state.

LSC STAFFING LEVELS

Page 40 of your justification indicates the Corporation has 222 authorized permanent staff positions.

Questions.

* How many of those positions are currently filled?
* How many contract employees are being currently utilized by the Corporation? (LSC staff roster for 87 shows 28)
* What steps is the Corporation taking to increase its staff to the authorized levels?
* When was the last time the Corporation was fully staffed?
* Why is it that currently at least 20% of the Corporation's staff are contract employees?
* How many contract employees are currently serving in top management positions at the Corporation? Please specify which positions are filled with contract employees.

	1986	1987
1. Permanent Employees	134	113
2. Contract Employees	36 (21% of total)	28 (20%)
3. Total staff	170	141

Preface to Answers. The Corporation has been well-served by many dedicated and competent individuals. Inevitably, some of these employees have left the Corporation to pursue other opportunities. In addition, certain employees hired between approximately 1982 and 1985 left the Corporation after it became apparent that they did not possess the professionalism and maturity of judgment necessary to discharge the important and often sensitive tasks entrusted to their care. Unhappily, the Corporation's work was too frequently compromised by the ill-considered public statements, the unauthorized actions, and the poorly advised determinations of staff. In brief, the number of employees who were determined to have displayed difficulties of judgment, professionalism, and competence was higher than expected and accounts for much of the turnover in the recent past. Fortunately, however, these same departures have eliminated many problems of the past and have, ultimately, enhanced the ability of the Corporation to provide more professional and responsible service.

Question. How many of those positions are currently filled?

Answer. 114, as of May 1, 1987.

Question. How many contract employees are being currently utilized by the Corporation? (LSC staff roster for 87 shows 28)

Answer. The Corporation has fifty-four personal service and temporary clerical pool contract employees. It also has five consultant contractors. In addition, as of May 1, 1987, personnel records indicate there were eighty-four on-call, short-term, monitoring contracts, each for a limited number of days and usually averaging seven days.

Question. What steps is the Corporation taking to increase its staff to the authorized levels?

Answer. Following Mr. Bayly's review of the needs and responsibilities of each office within the Corporation, and after having secured the immediate services of several essential members of the staff, the Corporation expects to post, advertise, and fill current vacancies. Both the position of Director of Office of Field Services and Assistant Comptroller have been posted for competitive appointment and the position of Budget Officer will likewise soon be posted as will that of Director of the Office of Policy Development and Communications and Manager of Government Affairs.

Question. When was the last time the Corporation was fully staffed?

Answer. Records indicate that the Corporation has not employed the full number of authorized staff for several years. Changed circumstances explain this to some extent. The Comptroller's Office, for example, has an authorized staff of fourteen. This number reflects a situation prior to closure and consolidation of regional offices and centralization of Corporate accounting and monitoring-auditing functions.

Question. Why is it that currently at least 20% of the Corporation's staff are contract employees?

Answer. The Corporation has attempted to fulfill its responsibilities with care and with attention to costs. Accordingly, management has attempted to ascertain a definite, lasting need for services before hiring permanent employees. In addition, the Corporation has sought to hire only as many new employees as it can adequately train, supervise, and assimilate into effective and productive working units.

Question. How many contract employees are currently serving in top management positions at the Corporation? Please specify which positions are filled with contract employees.

Answer. One. Of the Office Directors, General Counsel, and Comptroller, only the Comptroller position has a contract employee in an Acting Capacity.

CORPORATION'S ANNUAL REPORT

Section 1008(c) of the Legal Services Corporation Act requires that the Corporation publish an annual report which shall be filed with the President and the Congress. This Committee has not received copies of the Corporation's annual report for the past several years.

Question. When was the last annual report published? Please provide the Committee with copies of this report.

Answer. The last annual report published covered fiscal years 1982 and 1983. LSC is preparing a report for 1987, which will serve as an overview for recent years. The failure to issue an annual report for intervening fiscal years appears to have been an oversight during a period of transition in LSC management and is also related to LSC's lack of confidence in the accuracy and completeness of the data it has sought to gather.

TOP STAFF VACANCIES

It has recently come to my attention that vacancies exist in several top staff positions at the Corporation. Others are temporarily filled with individuals holding "acting" titles. For example:

Comptroller -- Acting comptroller
Manager, Government Relations Division -- Vacant
Director of Management Services -- Acting Director
Manager, Division of Information Services -- Vacant
Director of Field Services -- Acting Director
Grants and Budget Director -- Vacant
Manager, Division of Compliance and Review -- Vacant

Question. What specific action has been taken to date to fill these positions?

Answer. Comptroller - The Corporation intends to post this position within the very near future.

Manager, Government Relations Division - This position, too, will be posted very soon.

Director of Management Services - This position can be expected to be posted this summer.

Director of Field Services - This has been posted and candidates are being scheduled for interviews.

Manager, Division of Grants and Budget - This position is expected to be posted for appointment this summer.

Manager, Compliance Division - An Acting Manager was named and the position filled in February of 1987.

Question. What are the criteria that the Corporation uses for selecting personnel to fill top management positions? Do you look for experience in the field of management? If so, how many current employees in management positions at the Corporation have prior management experience?

Answer. In filling management positions, the Corporation considers proven professional ability, motivation, and particularly a desire to assist in providing effective legal services to the poor. Of course, the Corporation also places heavy emphasis on management or administrative experience. All Directors, Acting Directors, and the General Counsel have had broad and pertinent administrative, professional and management experience. In addition, all Division Managers are also experienced in supervision of employees and performance of assigned work.

Question. As members of the Board, are you satisfied with the quantity and quality of Corporation staff?

Answer. Board members have periodically commended Corporation staff for the quantity and quality of its work. At the same time, predictably, the Board has had reason to criticize Corporate staff on occasion for particular deficiencies, including the slowness of its response to requests from the field, insufficient attention to long-term planning, and in-house duplication of research efforts. Such areas of weakness, which have been regularly identified, have thereafter been strengthened by constructive criticism and closer attention from management.

CORPORATION PERSONNEL

Questions.

* How many employees have left the Corporation since May 1, 1986. For the record, please provide a list of these employees, their positions, and their reasons for leaving, i.e., whether they resigned, were fired or were RIFed, along with the specific reason why they left.

* How many employees did the Corporation have on board as of May 1, 1987? What were their positions? How many and which of these employees were full-time permanent staff? Contract staff?

* How many current permanent staff began as contract employees? Please identify such staff and their position for the record.

Answer. As of May 1, 1987, the Corporation had 168 employees, 54 of which were contract employees. A list of those contract employees is attached. Since few of them are serving in an acting capacity for which they would have a title, their positions are identified by the organizational unit to which they have been assigned. All other staff for all other positions are permanent employees. Of course, as noted in an earlier response, the Corporation also lets many short-term, on-call monitoring contracts. Since May 1, 1986, 59 employees have left LSC. Three employees were terminated, five had their positions abolished, two died, and the remainder resigned. The Corporation does not maintain complete information regarding employees' reasons for resigning. In most cases, however, employees appear to leave to accept new work. Concerns for the personal privacy of those employees who were terminated makes LSC reluctant to publicize adverse information concerning separation from service. A list of those employees who have left the Corporation since May 1, 1986 is attached. A list of those permanent employees who began as contract employees and their positions is also attached.

Temporary Contract Staff as of May 1, 1987

Temporary employees are only assigned a title when functioning in an acting capacity.

Name	Division
1. Barnes, Carol	DIS
2. Barnette, Elisa	MAC
3. Bennett, Vanessa	MAC
4. Brown, Cordelia	HR
5. Burley, Yolanda	OPDC
6. Cablle, Jr., Frederick	OPDC
7. Charlton, William	MAC
8. Daly, Brian	MAC
9. Delatour, David	MAC
10. Desantis, Joseph	MAC
11. Dickens, Michelle	Exec
12. Doriot, Phyllis	OFS
13. Duarte, Julio	MAC
14. Duvall, Robert	MAC
15. Freeman, Brenda	OFS
16. Gibson, Warren	MAC
17. Gillespie, Stuart	Compt
18. Grabis, Linda	MAC
19. Grane, Karen	GC
20. Grigsby, John	OFS
21. Hagerstrom, Eric	DIS
22. Hankin, Delia	OFS
23. Haynes, Brent	MAC/MRO
24. High, Eleanor	MAC
25. House, Delores	MAC
26. Kendall, Paul	GC
27. Kickingbird, Kirk	RCKY MTN RO
28. Kiernan, Joanne	MAC
29. Leigh, Deborah	GC
30. Mastandrea, Jamie	GC
31. McKenna, Michael	MAC
32. Miller, Dirk	MAC
33. Moore, Vickie	DIS
34. Mulloy, Vincent	MAC
35. Munoz, Franco	MAC
36. Navajas, Emma	OFS
37. Navanitikul, Somchai	DIS
38. O'Brien, Victoria	OFS
39. O'Driscoll, Patrick	MAC
40. Ohlen, Charley	OFS
41. Patrick, Lu-Ann	DIS
42. Ragland, William	MAC
43. Ray, David	MAC
44. Richardson, David	COMP
45. Roan, Helen	SRO
46. Scheinman, Jay	MAC
47. Shim, Kelly	OFS
48. Short, Ruby	ADMIN
49. Snow, Anita	OFS
50. Urbanic, Michael	MAC
51. Wilkinson, Grant	GC
52. Woll, Alan	MAC
53. Valentine, Carol	OFS
54. Young, Scott	MAC

Corporation Personnel

Question:

* How many employees have left the Corporation since May 1, 1986. For the record, please provide a list of these employees, their positions, and their reasons for leaving, i.e. whether they resigned, were fired or were RIFed, along with the specific reason why they left.

Answer:

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1.	5/5/86	Rudolph, Michael	M&R Spec.	Resignation
2.	5/16/86	Costellanos, Laura	Legal Ass't	Resignation
3.	5/23/86	Heine, Cynthia	Training Coor.	Resignation
4.	5/29/86	Chen, Chichou	Prog. Analyst	Resignation
5.	6/1/86	Struensee, Allen	Mgr. Spec. II	Resignation
6.	6/1/86	Thimell, Joel	Policy Spec.	Resignation
7.	6/9/86	Ackerman, Heidi	Ass't to Dir. III	Abolishment
8.	6/24/86	Gessner, David	Budget Dir.	Resignation
9.	6/25/86	Barnekov, Christopher	Sr. Economist	Resignation
10.	6/27/86	Coleman, Paula	Jr. Accountant	Resignation
11.	6/27/86	Nally, Patrick	Grant Spec.	Resignation
12.	6/30/86	Frey, Bernard	Dir. DIS	Resignation
13.	6/30/86	Dean, Audrey	Info. Spec.	Resignation
14.	6/30/86	Canter, Robin	Budget Analyst	Resignation
15.	6/30/86	Roundtree, Ginger	Admin. Ass't II	Resignation
16.	7/3/86	Cheetham, Hugh	Grants Supv.	Resignation
17.	7/7/86	Navran, Kenneth	Grants Spec.	Resignation
18.	8/15/86	Wake, Joan	Accounting Supv.	Resignation
19.	8/15/86	Whistler, Brian	Gov't Aff. Asst	Resignation
20.	8/15/86	Swift, Jane	Reg. Off./South.	Resignation
21.	8/15/86	Paquette, Patricia	Asst. to Dir. III	Resignation
22.	8/18/86	Thomas, Clara	Corp. Recpt.	Resignation
23.	8/22/86	Fuller, Robert	Dir. Personnel	Resignation
24.	8/22/86	Royster, Raydene	Clerk III	Resignation
25.	8/22/86	Fitzgerald, John	Sr. Reg. Attor.	Terminated
26.	8/26/86	Wilds, Moses	Asst. to Dir. II	Terminated
27.	8/29/86	Johnson, Geraldine	Admin. Asst. II	Resignation
28.	8/29/86	Rubert, Edson	Accountant	Resignation
29.	9/9/86	Kraakevick, Kristen	Pub. Aff. Asst	Resignation
30.	9/26/86	Carman, Noel	Admin. Asst. I	Resignation
31.	9/30/86	Hedemark, Carol	Secretary II	Resignation
32.	10/3/86	Aaronson, Stephen	Sub. Sup. Coor.	Resignation
33.	10/8/86	Williams, Melvin	Admin. Secretary	Terminated
34.	10/15/86	Miller, C. March	Dir. OMS	Resignation
35.	10/17/86	Bovard, Thomas	Counsel OPDC	Resignation
36.	10/31/86	George, Karen	Data Entry Clerk	Resignation
37.	10/31/86	Walker, Spencer	Budget Asst	Resignation
38.	11/1/86	Bunn, Beverly	Special Counsel	Resignation
39.	11/14/86	Brooks, Joshua	Acting Dir. OFS	Resignation
40.	12/2/86	Osterhage, Keith	Manager PDSS	Resignation
41.	12/8/86	Taylor, Judith	Admin. Secretary	Resignation
42.	12/8/86	Norell, James	Gov't Rel. Spec.	Abolishment
43.	12/19/86	Patterson, Deneice	Admin. Spec.	Abolishment
44.	12/26/86	Oliver, Melanie	Gov't Aff. Asst	Resignation
45.	1/9/87	Frances, Gail	Manager GBD	Resignation
46.	2/25/87	Singh, Jotinder	Acting Mgr. Audit	Resignation
47.	2/28/87	South, Steve	Counsel to VP	Resignation

48.	3/4/87	McNulty, Paul	Mgr. Govt Aff.	Resignation
49.	3/23/87	Scott, Judith	Tech. Asst. Spec.	Abolishment
50.	3/24/87	McHugh, Bernard	Asst to Dir. III	Resignation
51.	3/27/87	Crook, Clifford	Asst. to Dir. III	Resignation
52.	3/30/87	Keels, Andre	Secretary II	Abolishment
53.	4/9/87	Wentzel, James	President	Resignation
54.	4/14/87	Clark, Roland	Act. Comptroller	Death
55.	4/15/87	Fabela, Anna	Secretary II	Resignation
56.	4/19/87	Murphy, Michael	Sr. Atty/Southern	Death
57.	4/24/87	Gamble, Belinda	Personnel Spec.	Resignation
58.	4/30/87	Coster, Michael	Comptroller	Resignation
59.	4/30/87	Muffley, Sandra	Data Sys. Coord.	Resignation

Current Permanent Staff that began as Contract Employees

Question:

* How many current permanent staff began as contract employees? Please identify such staff and their position for the record.

Answer:

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	NAME	TITLE	DIVISION
1.	Anonuevo, Jocelyn	Secretary II	MAC
2.	Baker, Timothy H.	Secretary/Acting Tres.	Exec.
3.	Balenger, Juanita	Research Assistant	MAC/Comp.
4.	Banks, Wanda	Deputy Director	OMS
5.	Batie, Patricia	Acting Manager	MAC/Audit
6.	Boswell, Charles	Gov't Affairs Spec.	OPDC
7.	Bowen, Shirley	Account Clerk	Comptroller
8.	Broccoletti, Peter	Regional Officer	Pacific
9.	Brough, Wayne	Policy Analyst	OPDC
10.	Bryan, Robert	Asst Analyst, M&E	MAC
11.	Callahan, Clifford	Research Assistant	MAC
12.	Castro, Lourdes	Secretary II	MAC/Comp
13.	Coleman, Paula	Staff Accountant	Comptroller
14.	Cottom, John	Mail Clerk	OMS/Adm.
15.	Dickerson, Alice	Asst Mgr/Admin EO	Human Res.
16.	Doherty, Lewis	Research Assistant	MAC
17.	Douglas, Kathleen	Spec. Ass't to Pres.	Exec.
18.	Dowd, Edward	Manager	MAC/Comp.
19.	Elgin, Robert	Economist	OPDC
20.	Faulkner, Deborah	Admin. Secretary	MAC
21.	Foster, Gregory	M&E Analyst	MAC
22.	Franchi, Rafael	Admin. Assistant II	MAC
23.	Fumento, Michael	Asst. Councel	OPDC
24.	Gaboury, Mario	Manager	OPDC
25.	Gibeault, Michael	Public Affairs Ass't	OPDC
26.	Glasow, Suzanne	Assistant Gen. Counsel	OGC
27.	Gomes, Anthony	Manager	MAC
28.	Hagerstrom, Kristin	M&E Spec. Legal	MAC
29.	Harris, Joan	Research Assistant	MAC/Comp.
30.	Hertiage, Christopher	Assistant to Dir. I	OFS/Sub. Supp.
31.	Hickey, Sandra	Manager	Human Res.
32.	Higgins, Marv	Acting Director	OFS
33.	Hoang, Christina	Secretary II	MAC
34.	Just-Buddy, Earl	Supply Assistant	Admin.
35.	Keen, Rochelle	Personnel Analyst	Human Res.
36.	Linderman, Phillip	Legal Assistant	MAC
37.	Lopez, Lourdes	Secretary II	DIS
38.	Lopez-Silvero, Alberto	M&E Analyst	MAC
39.	McIntyre, James	Assistant to Dir. III	OMS
40.	Merkle, Edward	Government Affairs Ass't	OPDC
41.	Meyer, John	Acting Director	OMS
42.	Moses, Charles	Assistant Manager	PDSS
43.	Muldrow, Deloris	Secretary III	MAC
44.	Parkash, Krishan	Administrative Secretary	MAC/Audit
45.	Payne, Lee	Attorney	MAC/Comp.
46.	Preston, Jeanne	ATD III	DIS
47.	Rathbun, Daniel	Acting Assistant Manger	OPDC
48.	Reuter, Dean	Assistant to Dir. III	MAC

49.	Robertson, Yvonne	Executive Assistant	Comptroller
50.	Rouse, Diane	Lib. Coor.	OGC
51.	Rouse, Raymond	Proc. & Building Ass't	Admin.
52.	Rozek, Christopher	Acting Manager	PDSS
53.	Russell, Leslie	Pri. Attorney Inv. Coor.	PDSS
54.	Schaer, Jennifer	Secretary III	OMS
55.	Schlegel, Yvonne	Secretary II	OFS
56.	Segrest, Rebecca	Staff Assistant	MAC
57.	Shakir, Letittia	Secretary III	MAC
58.	Simmons, Keith	Attorney	MAC/Comp.
59.	Singleton, Jestine	Acting Admin. Ass't I	PDSS
60.	Smock, Thomas	Secretary II	Pacific
61.	Speight, Sylvia	Records Clerk	OFS
62.	Spranger, Susan	Legal Assistant	MAC
63.	Stanley, Susan	Assistant to Dir. II	OFS
64.	Sulik, William	Attorney	MAC/Comp.
65.	Sullivan, Daisy	Secretary II	OGC
66.	Tobin, James	Research Assistant	MAC
67.	Van Evera, Laura	Assistant General Counsel	OGC
68.	Villa, Charito	Junior Accountant	Comptroller
69.	Webster, Patricia	Research Assistant	MAC
70.	Wiley, Hilda	Secretary III	MAC/Comp.
71.	Yee, Theresa	Staff Attorney	Midwest

Question:

The Minimum Access Concept of two lawyers for every 10,000 poor persons has been generally accepted over the years by the Congress, the legal services community, and the Corporation. In order to achieve minimum access, it is estimated that an appropriation of $14.56 per poor person would be required. At the January meeting of the Board, Mr. Mendez suggested to Jonathan Ross, the former President of the New Hampshire Bar Association and a co-founder of Bar Leaders for the Preservation of Legal Services for the Poor, that the bar should look at how one arrives at minimum access and what the Board ought to do towards achieving minimum access in terms of the appropriation, pro bono, IOLTA, and other programs.

What has been done by the Corporation staff and the Board in determining the question of how one arrives at minimum access? What is planned for the future?

Answer:

The staff is awaiting such further direction as may issue from the Board of Directors at upcoming meetings before examining in any depth the important issues surrounding the concept of minimum access.

Outside Counsel

Question. Mr. Bayly, as the former General Counsel of LSC, you had responsibility for overseeing the budget and operations of the Office of General Counsel. I am interested in the use of outside counsel by that office.

* What guidelines are established by the Corporation for the use of outside counsel?
* How is outside counsel selected by the Corporation and how does the Corporation determine what fees will be paid?
* What is the range of hourly fees LSC paid in 1986 to outside counsel (i.e., the lowest hourly rate negotiated and the highest hourly rate negotiated)?
* For the record, please provide the Subcommittee with an accounting for 1986 of the costs incurred by LSC for each lawsuit filed and/or pending in that year against the Corporation and for the costs incurred for each denial-of-refunding proceeding in 1986. Also, please provide a list of all law firms or individual lawyers who received fees from LSC in 1986 and the gross amount of those fees that were paid to each attorney or firm during 1986.

Answer. The Corporation utilizes outside counsel to handle litigation which is conducted outside of Washington, D.C., requires specialized expertise, or cannot be handled by in-house counsel due to such constraints as time or staff resources.

Generally, outside counsel is selected for the Corporation by the General Counsel and/or the President. Outside counsel is selected on the basis of a number of factors including, but not limited to, availability, expertise in a specific area of the law, and fees charged for compensation. Fees paid to outside counsel are negotiated, and it is the policy of LSC always to solicit pro bono or discounted rates.

To reveal with attributing detail the range of hourly rates charged by outside counsel who have provided discounted rates in the spirit of pro bono contribution would seriously inhibit the Corporation's ability to obtain discounted rates in the future. However, I can advise the Subcommittee that in 1986 discounted rates for practitioners representing LSC exhibited, for various reasons, substantial variation.

Also, as indicated in response to previous questions from the Subcommittee, public identification of litigation costs by case would reveal the Corporation's position in prosecuting or defending active cases. Such disclosure would allow for minute inspection of the Corporation's position by opposing parties, thereby enabling them to determine the time and resources the Corporation has invested in that case, and therefore, the priority it has been given. Additionally, revealing litigation costs by case would destroy the Corporation's flexibility in negotiating the disposition of litigation as it makes manifest beforehand the Corporation's past, current, and likely future litigation costs. See Responses to Questions from the Hearing before the U.S. Senate Committee on Appropriations, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, May 14, 1986, Question #22. However, in the interest of providing the requested information to the subcommittee to the greatest extent possible without compromising the Corporation's ability to pursue litigation successfully, an accounting for 1986 of costs incurred paid by LSC, listed by case type for all judicial actions pending in that year, is set forth below.

Fees and Costs Incurred By LSC For All Lawsuits Filed and/or Pending During FY 1986

Case Type	
Compliance (i.e., Denial of Refunding/Suspension or Termination of Funding/ Monitoring Disputes)	$155,766.82
Labor/Employment	196,831.05
Contract, Tort, and Other	33,496.48

LSC also posted a bond of $110,000 in a labor/employment case during 1986.

Listed below by case type are costs incurred by LSC during FY 1986 for attorneys' fees and the law firms to which such fees were paid.

Case Type/Firms	Costs Incurred By Case Type
Compliance (i.e., Denial of Refunding/Suspension or Termination of Funding/ Monitoring Disputes)	$139,983.05
Dunnells, Duvall, Bennett & Porter (Washington, D.C.)	
Snellings, Breard, Sartor, Inabnett & Trascher (Monroe, LA)	
W.K. O'Brien & Associates (San Francisco, CA)	
Jackson & Campbell (Washington, D.C.)	
Dilworth, Paxson, Kalish & Kaufman (Philadelphia, PA)	

Labor/Employment $196,809.25

Thompson, Mann & Hutson
(Greensboro, S.C.)

Stein, Mitchell & Mezines
(Washington, D.C.)

King & Spaulding
(Washington, D.C.)

Jackson & Campbell
(Washington, D.C.)

Kator, Scott & Heller
(Washington, D.C.)

Miscellaneous $29,274.17

Neilsen, Hodgson,
Parinello & Mueller
(San Francisco, CA)

Bradshaw, Fowler,
Proctor & Fairgrave
(Des Moines, IA)

Whittenburg, Whittenburg
& Schachter
(Amarillo, TX)

Wald, Harkrader & Ross
(Washington, D.C.)

Nutter, Bird, Marella,
Boxer, Wolper & Matz
(Los Angeles, CA)

Boothe, Prichard & Dudley
(McLean, VA)

Perception of Bar Associations towards Legal Services -- Record

Question: What are you hearing from your colleagues in the bar about legal services?

During my relatively brief tenure as president of LSC, I have had occasion to speak with representatives of both local and national bar associations. What has heartened me most is the bar's renewed commitment to support of legal services and its enlarged efforts to ensure -- and expand -- additional sources of funding. Also encouraging is a growing sense that legal services must be assured not just by more money, but by the application of individual talent and time. Unhappily, of course, too many lawyers remain indifferent to the legal needs of the poor, or are satisfied to address them without personal involvement and contribution. Unhappily, too, significant segments of the bar continue to question both the wisdom and intention of many LSC initiatives. My hope is to convince the bar that although its members may disagree with the advisability of a Board position or proposal, they need not suspect the Board's bona fides or its commitment to the aim we all share: provision of legal services to needy members of our communities.

Question: Do local and state bar associations support their local programs and work cooperatively with them?

Local and state bar associations seem generally to have endorsed the work of local programs and to have labored in cooperation with them. Certainly the Corporation's efforts toward expanded private attorney involvement have had the purpose, in part, of fostering bar involvement and support. Where I see need for additional effort by the local bar is in discharging its important responsibility in selecting the attorney membership of local boards. That specific responsibility extends to a larger accountability for the entire work of the local program.

Question: What are you hearing from your colleagues about the LSC Board and staff?

Comments from colleagues vary. They have ranged from praise for the innovative work of the Board to blunt criticism of its proposals and strong reservations about its activities. Colleagues usually favor the Corporation's monitoring policies, for example, 'while frequently submitting complaints in individual instances. Colleagues also endorse efforts to improve training for staff attorneys and are enthusiastic about the benefits which accrue to programs through computerization and managerial efficiencies. Many, however, remain uncertain about whether private attorney involvement can be expanded or whether alternative delivery modes are practicable. Finally, many of my colleagues have expressed their favorable impression of LSC staff work even as they register their concern that staff is slow to react to suggestions and complaints from the programs, bar groups, or other interested members of the public.

Question: Is there an adversarial relationship between bar associations and LSC generally?

Too frequently highly publicized exchanges between bar leaders and LSC Board members have obscured the cooperation and cordiality which have marked relations between the bar and LSC. The recurring cycle of monitoring ventures and the personal experience of both LSC staff and Board members indicates that while bar associations may differ with LSC in respect of various issues, no fundamental antagonism or animosity characterizes their ordinary relationships. Indisputably, of course, respected bar leaders have strongly voiced their opposition to what they are persuaded constitute ill-advised policies or proposals of the Board. Those disagreements, which are often protracted and sharp, should not be mistaken for wholesale opposition to the work of the Corporation. I have come to believe, moreover, that much of the antagonism and suspicion which earlier marred the Corporation's relations with the bar has been dissipated. Relations have improved largely because the Corporation has sought to correct problems for which the Corporation must itself take responsibility. My hope is that absent rancor and suspicion, the Corporation will be able to collaborate fully with the bar in their shared responsibility to assure legal services to those who need them most.

UNALLOCATED RESERVE

On February 27, 1987, the Committee approved a reprogramming request which included moving $685,200 into a separate account in the Management and Administration budget line item identified as an "Unallocated Reserve" -- conditioned upon future reprogramming notification about the use of these funds.

Question: Has a proposal for the distribution of these funds been made to the Board? If so, what is it? (Note: Bayly told us on February 17 that he was instructed to submit the proposal to the Board at its next meeting.)

Answer: Yes. A proposal was considered by the Board at its March 21, 1987 meeting to leave $385,200 of the $685,200 in the "Unallocated Reserve" line and to transfer the remaining $300,000 to Program Development, the line item from which the funds originally came.

Question: Has the Board taken action on the proposal? (Note: Bayly indicated on February 27, that the Board would make a decision at its meeting on March 20, 1987.)

Answer: Yes. The LSC Board approved the proposal at its March 21, 1987 board meeting.

Question: When do you anticipate the Committee will see a further reprogramming request on this item?

Answer: On March 31, 1987, the Committee forwarded appropriate notification of this reprogramming request. A copy of this request is attached for your information.

No other action by the Board is presently scheduled.

LEGAL SERVICES CORPORATION
400 Virginia Ave., S.W., Washington, D.C. 20024-2751

John H. Bayly, Jr.
President

Writer's Direct Telephone
(202) 863-1839

March 31, 1987

Honorable John C. Stennis
Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Stennis:

In paragraph five on page two of my letter dated February 17, 1987, I notified you that at its meeting on January 30, 1987, the Board of Directors of the Legal Services Corporation voted to reallocate $685,200 in Fiscal Year 1986 carryover funds to Unallocated Reserve, a separate account within LSC's Management and Administration budget line. As is reflected in the minutes of the LSC Board of Directors meeting on January 30, $460,200 of the $685,200 was taken from the Program Development line of the LSC budget. I reported to you that the Board instructed me to submit a proposal for the use of these funds for consideration at its next meeting.

Upon my recommendation, at its meeting on March 21, 1987, the LSC Board of Directors voted to leave $385,200 of the $685,200 in Unallocated Reserve and to transfer the remaining $300,000 to the Program Development line from which those funds originally came. In my memorandum to the Board of Directors recommending the restoration of $300,000 in Program Development funding, I explained that allocation of these funds could support selected comparative delivery model sites. I noted that preliminary Corporation review of projects indicates that the present comparative delivery model studies, which are partnerships with bar associations, assist eligible clients with their particular legal problems. Additionally, they provide invaluable information about extending effective, efficient legal services to the poor on the local level.

The effect of the Board's vote to transfer $300,000 from Unallocated Reserve to Program Development is to replace those funds in the budget account from which they were transferred by Board action of January 30. Nonetheless, in view of my February 17, 1987 letter to you, I believe that I am obligated to notify you of the Board's disposition of the funds in question.

If you have any questions, or require additional information, please do not hesitate to contact me.

Very truly yours,

John H Bayly

John H. Bayly, Jr.
President

Severance Pay

Question:

- What guidelines does the Corporation follow in paying "severance pay" to employees who are released from their employment?

Answer:

Effective January 28, 1985, the Corporation suspended the Interim Severance Pay Procedures of June 9, 1983. Each termination is to be reviewed by the LSC President until new severance pay procedures become effective.

Question:

- In how many instances during fiscal years 1986 and 1987 has the Board or the Corporation authorized severance pay?

Answer:

Personnel records indicate that payments contingent upon employees' leaving employment with the Corporation were authorized six times.

Question:

- What is the dollar amount involved?

Answer:

$14,058.79

Question:

- In negotiating a contract with an officer or employee of the Corporation, is "severance pay" a standard provision of the contract?

Answer:

No.

Question:

- How many contracts currently contain a severance pay provision?

Answer:

None, except for the contract of the President of LSC, which allows three months of additional salary and benefits contingent upon the President's being reasonably available to LSC during those three months for consulting.

Statutory Language

Question: The FY 88 budget of the Corporation requests modifications in the statutory language of the LSC appropriation. Specifically, the budget requests the following provisions be removed from the statute:

- the funding formula and designated funding levels for programs and activities of the Corporation;

- the reprogramming provisions regarding regulations;
- the requirement that the Corporation provide a full hearing before an independent hearing examiner when denying an application for refunding a program. (Note: This provision represents a loosening up of standards for defunding and denial of refunding contained in the LSC Act. They are asking that we loosen this further by only requiring a "fair" rather than a "full" hearing.)

* Has the Board discussed these changes? If so, when?
* If the Board did not request these three changes, who did?
* If we eliminate the statutory funding formula, how do you propose to distribute funds to the Field Programs?

Answer: These requests for modifications in the statutory language of the LSC appropriation have appeared in recent years and have figured prominently in discussions by the Board at public sessions of its meetings. While no Board resolution underlies these specific requests, a majority of the Board has indicated its belief that the funding formula requirement and the reprogramming provision conflict with the authority vested in the Board by the LSC Act.

Additionally, a majority of the Board has repeatedly expressed its concern about the high cost involved in denial of refunding proceedings. The Board strongly believes in providing recipients adequate procedural protection but that such procedures should not, because of their high cost, inhibit legitimate administrative action against programs that fail to provide efficient and effective legal services to the poor.

Upon elimination of the statutory funding formula and following careful analysis, the Corporation would consult with Congress to determine a fair distribution of funds that would ensure that scarce federal resources be directed in an equitable manner to the poor.

PRIVATE ATTORNEY INVOLVEMENT

The Corporation requires the grantees to devote 12.5% of the grant to efforts to stimulate Private Attorney Involvement.

Question. How successful has this effort been?

Answer. Efforts by LSC recipients to involve the private bar in the delivery of legal services to poor persons appear to have been reasonably successful. The PAI requirement, as originally implemented in 1981, required expenditure of 10% of basic field funding on Private Attorney Involvement. The success experienced at the 10% level eventually led to the increase to 12.5%, effective in 1984.

Further substantiation of the success of the PAI effort has been the small number of requests from recipients for full or partial waivers of the 12.5% expenditure requirement. Only twenty-six programs requested such waivers for both FY 1985 and FY 1986. This represents a small percentage of LSC's grantees.

Question. What do your monitoring reports show concerning the effectiveness of PAI efforts?

Answer. The Corporation believes that PAI is becoming increasingly effective and efficient. However, monitoring reports have identified technical problems in many individual programs that appear to result mainly from insufficient attention to regulatory requirements by LSC recipients.

FY 88 Budget -- Reduction to Field Programs

Question: The Corporation's budget request proposing reducing funding for the Delivery of Legal Assistance by $4.8 million in FY 88 (from $280,354,000 to $275,554,000). At the same time, the appropriated level for Corporation Management and Grant Administration would increase by $4.8 million (from $7.4 million to $12.2 million).

*How do you justify the decrease to Field Programs?

*Page 13 of your budget justification indicates that you are requesting no adjustments to your FY 1988 appropriation. Yet this Subcommittee recently approved a reprogramming for a cost of living increase for Corporation staff and funding to meet the new Federal retirement system obligations. In addition, your Object Class Table shows increases in personnel compensation, employees benefits, other personnel services, travel and transportation, communications, rent, printing and reproduction and other operating expenses. These are legitimate adjustments to base. Why would you not include these adjustments in the budget request, rather than pulling funds away from the field programs?

Answer: The Board does not desire reductions in field program funding. If the Corporation's Fiscal Year 1988 Budget remains at $305.5 million, the Board clearly intends to affect the field programs as little as possible. In the Fiscal Year 1987 budget, the appropriation for the Management and Administration line was reduced. This reduced amount was provided to the Field Programs. In effect, Congress provided a "bonus increase" to Field Programs in an effort to encourage direct services and to force the Corporation to expend its 1986 carryover. In Fiscal Year 1987, the Corporation does not expect to have a large carryover of funds. The Management and Administration function, if left at the reduced appropriations level mandated in the 1987 Appropriations law, would not be sufficiently funded to carry out the Corporation's Congressional mandate to provide oversight, field services, monitoring, auditing, and compliance, and administrative actions. The Board did not include these adjustments as increases in the overall budget request because of a general sense that an overall budget freeze was the most appropriate approach.

Justification Material Submitted To Committee

Question: The justification for the FY 88 Budget Request again lacks any specific details on how you propose to spend the funds requested. Understandably, the Committee has many unanswered questions as to how the Corporation plans to actually use the funds it requests. We had this discussion a year ago, and I was hopeful that that we would see significant improvements in this year's submission.

* Has the Board taken a position on funding for migrant programs or State and National Support Centers?
* When do you anticipate these decisions will be made?
* What specific activities does the Corporation have planned during FY 88 in the training and technical assistance area? ($1,000,000 requested for this line item)
* Is there a need for additional training and technical assistance in the field. Is this need being adequately addressed?
* What proposals are under consideration for the area of Program Development during FY 88? ($1,340,000 requested for this line item)

Answer: The LSC FY 88 Budget Request attempts, without burdensome particulars or undue clutter, to articulate the purposes for which the requested funds will be allocated. Unlike previous years, asterisks appear on four budget line items. The Board directed the placement of these asterisks to inform Congress of the Board's review and study of the activities funded under these line items, and the potential for review of the amount or distribution of such funds.

The Board voted to request the same amount of funds in 1988 for migrant programs, state support, and national support. Each of these budget functions is currently under review. Funding of these activities will be discussed at the Board meeting scheduled for June 25-26, 1987, and may be further deliberated at future sessions of the Board.

One million dollars was requested for training and technical assistance in FY 88. The Corporation's Training Task Force is expected to present its findings at the June 25-26 Board meeting. These findings will facilitate the Board's review of some of the questions regarding the need of training and technical assistance in the field. The Board is expected to consider the impact of new technologies, substantive education, access to continuing programs of training, and advances in communication and retrieval of information.

The Board has requested less for Program Development in FY 88 than it did in FY 87. The Board has learned that the Law School Civil Clinical Project, the Voucher Program, and the Private-Attorney Contract Program have been successfully carried out below the amounts originally budgeted. The Corporation would like to continue to fund these programs and expand, in a limited fashion, the number of test sites.

PRIVATE LAW FIRM PROJECTS

From June 1984 through June 1986, LSC awarded 58 individual 1-year contracts to 50 private law firms to provide legal services for cases, such as uncontested divorce, personal bankruptcy, wills, or child support. As of November 30, 1986, no law firm with a contract over one year old had met its case completion obligations. At that time, only 38 percent of the project's approximately 9,600 cases had been completed.

Question: When will this project be completed and evaluated?

Answer: Corporation figures show that, as of November 30, 1986, 9,630 cases had been contracted under the Private Law Firm Project (PLFP) and of these, 3,525, or 38%, had been completed. As of May 27, 1987, 4,877.10, or 51.45% have been completed. LSC plans to issue an interim project evaluation report in July, 1987.

The variety of case types and their respective differences in complexity make estimating contract completion dates difficult. In addition, LSC cannot control the amount of referrals each contractor receives, since referrals are supplied by the local legal services program.

Question: What does the slower than anticipated progress indicate?

Answer: Three factors have influenced the case closure statistics of the Private Law Firm Project.

First, in the original solicitation process, local field programs gave LSC estimates of the number of clients they expected to be able to refer to the PLFP. These estimates were broken down by case type. At the beginning of the project, contracts were written with private firms to handle specific numbers of these case types. Unfortunately, in some instances, the original estimates given by the field programs were greater than the actual referrals during the course of the project; this necessarily affected case closure rates.

In addition, some LSC field programs have not made as many referrals to the contractors as had been promised. In many instances, this has necessitated LSC's extension of the contracts beyond the original one-year term in order to assure accurate assessment of the value of these methods for serving the poor.

Second, there is a distinction between the number of clients served and the number of cases closed. The PLFP began a billing system which breaks down case billings to reflect case development at point of resolution. Under this "case fractionalization" system, a case may be broken down into four categories:

a) a .25 case is a case closed when the client withdraws after the initial interview, but before the filing of the initial pleading. The dollar amount of the case is one-quarter that of a full case;

b) a .50 case is a case closed when the client withdraws after the filing of the initial pleading, but before any hearings take place. The dollar amount of the case is one-half that of a full case;

c) a .75 case is a case closed when the client withdraws after the filing of the initial pleading and after any hearings are held, but before judicial resolution. The dollar amount of the case is three-quarters that of a full case; and,

d) a 1.0 case is a case closed through judicial resolution.

Under this system, four cases closed at .25 are billable as one closed case (1.0). Therefore, the number of clients actually handled is a more meaningful indicator of the success of the project.

To date, 6,261 clients, and 4,877.10 billable cases, have been handled by the PLFP.

A third factor in evaluating any experimental or demonstration project is that, as new ground is being broken, the start-up period of each contract is the time of slowest case activity. This start-up period varies from case type to case type.

Question: Do you plan to continue this method of service delivery?

Answer: A final report has not yet been issued on the Private Law Firm Project (PLFP). The Corporation will, of course, make its decision on future funding only after the report has been issued and the findings have been reviewed.

VOUCHER PROJECTS

The Corporation initiated voucher projects in Orange County, California, and San Antonio, Texas, to determine its workability and compare the cost and quality of service with other delivery methods. Each project was to be completed within one year. The Orange County project began in February 1986 and as of December 31, 1986, 10 percent of the planned number of cases had been completed. The San Antonio project began in September 1985 and as of November 30, 1986, 44 percent of the cases had been completed.

Question: To what do you attribute the slowness of case completion?

Answer: It is generally recognized that a host of factors outside of attorney control affect the speed at which any legal case is closed. This is particularly true in the volatile area of family law, the area that both the Orange County and San Antonio voucher projects handle exclusively. Often, cases are opened, spouses reconcile, and then become estranged again. Additionally, child-custody cases are lengthy procedures and, as with any case, the attorney must await a court-appointed hearing date. Because of these factors, neither the Orange County nor the San Antonio voucher projects set a strict schedule for case completion.

Orange County and San Antonio are tri-partite studies, and include the staff attorney, private law firm, and voucher components. Since your question focuses on the voucher component, the following statistics relate specifically to that component.

The Orange County project began voucher intake in March 1986, and ceased intake on December 31, 1986. During these ten months, 170 voucher cases were opened. As of March 30, 1987, 101 cases or 59.4% were closed, and 69, or 40.6%, were still pending.

The San Antonio Voucher Project began voucher intake in early November 1985. From that date until October 1986, 224 voucher cases were opened; as of December 31, 1986, 128 or 57.1%, had been closed, and 96 or 42.9%, were still pending.

Question: What have the results of these two projects so far indicated?

Answer: When LSC contributed major funding to the joint LSC-ABA San Antonio Voucher Project in 1985, LSC and the ABA agreed not to make any analysis prior to the complete gathering of the data. It was believed that release of an analysis of incomplete data would be misleading and imprudent. The same policy of awaiting final data before making an analysis is being followed in regard to the Orange County site.

IMPACT OF VOUCHER PROJECTS ON PRO BONO EFFORTS

One objective of LSC's voucher project is to expose a large number of attorneys to the legal needs of the poor and to induce participating attorneys to provide services through other reduced fee or pro bono projects.

Question: How many attorneys are participating in the voucher method of delivering services?

Answer: The San Antonio voucher panel consists of approximately fifty private attorneys.

The Orange County panel consists of forty-three attorneys.

Question: Are there indications that the participating attorneys have increased their pro bono efforts or continued to provide services at reduced cost?

Answer: Since both the San Antonio and Orange County projects are not yet completed, LSC has not assembled data concerning participating attorneys' increased pro bono or continued reduced-fee efforts subsequent to these projects.

QUESTIONS SUBMITTED BY SENATOR HATFIELD

Question:

What effect do you expect the Martin/Holt study (new formula for distribution of funds) to have on funding levels for migrant field programs?

Answer:

The Board of Directors has made no final decision as to the use of the migrant study's results. It is difficult to speculate as to the potential effect of the study on funding levels for migrant field programs absent full review of its implications and specific Board action.

Question:

How does the Martin/Holt study differ from the 1977 Lillesand study in estimating migrant population in each state?

Answer:

The state-by-state distributions, as reported at Table 6 (page 78a) of the study, are reproduced below.

LILLISAND MIG POP 1976		*PREFERRED FORMULA 1982*	
STATE		*STATE*	*PER DIST*
TEXAS	21.06%	CALIFORNIA	23.03%
CALIFORNIA	16.21%	FLORIDA	10.17%
FLORIDA	11.05%	WASH	5.06%
MICH	5.14%	TEXAS	5.00%
WASH	4.68%	NORTH CAR	4.47%
OHIO	3.23%	GEORGIA	3.53%
MINN	2.88%	KENTUCKY	3.27%
ILLINOIS	2.77%	ILLINOIS	2.71%
OREGON	2.74%	OREGON	2.52%
NORTH CAR	2.66%	IOWA	2.14%
NEW YORK	2.13%	MINN	2.12%
GEORGIA	2.09%	MICH	2.05%
COLORADO	2.03%	IDAHO	2.03%
IDAHO	1.66%	ARIZONA	1.86%
SOUTH CARO	1.43%	SOUTH CAROI	1.75%
INDIANA	1.35%	ARKANSAS	1.70%
MISS	1.33%	TENN	1.67%
NEW JERSY	1.27%	ALABAMA	1.61%
WISCONSIN	1.27%	NEW YORK	1.56%
ARIZONA	1.17%	MISS	1.52%
MONTANA	1.14%	INDIANA	1.34%
MAINE	1.08%	VIRGINA	1.31%
NORTH DAKC	0.94%	WISCONSIN	1.30%
OKLA	0.90%	OHIO	1.29%
VIRGINA	0.82%	NEBRASKA	1.21%
LOUISIANA	0.68%	LOUISIANA	1.20%
DEL	0.62%	COLORADO	1.17%
WYOMING	0.60%	KANSAS	1.14%
KANSAS	0.59%	HAWAII	1.08%
PENNA	0.58%	NORTH DAKO	1.03%
MARYLAND	0.52%	MISSOURI	0.99%
NEW MEXICO	0.51%	MONTANA	0.96%
UTAH	0.47%	OKLA	0.96%
ARKANSAS	0.40%	PENNA	0.94%
CONN	0.40%	NEW JERSY	0.72%
NEBRASKA	0.37%	NEW MEXICO	0.58%
ALABAMA	0.32%	MAINE	0.52%
MASS	0.24%	MARYLAND	0.51%
IOWA	0.16%	SOUTH DAKOT	0.41%
MISSOURI	0.14%	MASS	0.31%
WEST VIRGIN	0.11%	UTAH	0.24%
TENN	0.09%	CONN	0.20%
KENTUCKY	0.04%	WYOMING	0.18%
NEVADA	0.04%	WEST VIRGINI	0.17%
NEW HAMP	0.03%	DEL	0.15%
VERMONT	0.03%	NEVADA	0.13%
SOUTH DAKC	0.01%	NEW HAMP	0.07%
R I	0.01%	VERMONT	0.06%
ALASKA	0.00%	R I	0.03%
HAWAII	0.00%	ALASKA	0.01%
US	100.00%	U S TOTAL	100.00%

Question:

The Martin/Holt study apparently shows roughly the same adjusted numbers of migrant workers and dependents as those in the Lillesand study. Why then are reductions in funding levels proposed?

Answer:

The Board of Directors has not acted on the Martin/Holt migrant study. There are currently no proposals to reduce the level of migrant funds.

Question:

It is my understanding that the Martin/Holt study excludes several important groups of migrant farm workers - specifically migrant forestry workers and migrant canning and processing workers and the entire island of Puerto Rico. Furthermore, the Martin/Holt study appears to emphasize relative weights of work activity rather than people (workers and dependents). Is this true? Please comment.

Answer:

While findings of the Martin/Holt study continue to be examined and debated, certain conclusions appear with sufficient clarity to respond, at least tentatively, to these inquiries. Professor Martin, of course, has participated fully in preparation of these responses.

The LSC migrant program focuses on those particular problems an individual is more likely to encounter while migrating, e.g., farm labor camp conditions. This would logically focus on special service provisions for individuals primarily while engaging in migrant farmwork away from home. Therefore, the majority of supplemental funding is directed toward areas where migrants work. Migrants and their dependents, if otherwise eligible, are already served where they live. The study's formula also recognized that overall service to the migrant population cannot be seen as occurring either where the migrant works or where the migrant lives. The Martin/Holt formula considers both where the migrants live as well as where they work for purposes of assessing the total provision of legal services.

Owing to the existing basic field services available in each home or base state, the formula is weighted toward favoring the allocation of supplemental monies to "stream" or work-place states. These latter states are specifically targeted to receive additional monies because they face the majority of service demands. The amounts allocated on the basis of where workers live recognize the cooperative arrangement that often exists between home-state and work-place-state programs. The Martin/Holt report is sensitive to this delicate balance. Almost no migrant farmwork actually occurs in Puerto Rico. Puerto Rico does get adequate basic funding. Those who migrate from Puerto Rico to other areas to engage in farmwork are counted in the study where they fit the migrant farmworker definition.

As to your first point, it is not true that all of these types of workers are excluded. For example, some canning workers are included and some are not. This depends on the survey methodology rule that if more than 1/2 of the commodity processed at the location is also grown there, then it is considered farming and the workers are included. Otherwise, the location is considered food processing and the workers are excluded. Also, groups of workers such as lawn care and florist shop workers, though considered agricultural, were not thought to be the primary population requiring supplemental funding.

Question:

A portion of the Martin/Holt preferred formula is based upon the Hired Farm Working Force (HFWF) survey which I understand was discarded by the Lillesand study as inherently unreliable. Why is it employed in the Martin/Holt study?

Answer:

As explained by Professor Martin, it is unclear why Lillesand would have discarded the HFWF data. The conclusions of the Lillesand study as well as the problems inherent in the Lillesand research methodology are discussed at length in the Martin/Holt study. When applied correctly, the HFWF data, in Professor Martin's view, can be very useful. The Martin/Holt study utilizes the Hired Farm Working Force survey along with numerous other data bases in order to counteract biases inherent in any single source.

Question:

What is the Corporation's position on the Martin/Holt study? Will it be employed to determine migrant population and funding levels in each state?

Answer:

The Martin/Holt Study was presented to the LSC Board of Directors on March 21, 1987. The LSC Board did not act, however, to alter the level of migrant legal services funding in accordance with the Martin/Holt Study, and the study itself remains under internal review by the Corporation. Public comment has been invited and is being received. In addition, the Board has requested further analysis and recommendations. No Corporation action on the basis of the Martin/Holt Study is now contemplated.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

BIENNIAL BUDGET CYCLE

Questions:

Calls for budget reform are increasingly heard as budget deadlines are too often missed, important budget decisions are delayed, appropriation bills and other direct spending legislation are held up in committee, and omnibus spending bills take the place of timely and orderly consideration of individual bills. One procedural reform that is being considered is the two-year budget cycle where budget and appropriations matters would be considered in the first year, and authorizations and oversight would be undertaken in the second year.

1. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

2. Approximately what proportion on your annual appropriation request would you consider simply repetitious of the previous year's submission?

3. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

4. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

5. If you oppose the biennial budget concept, please give the subcommittee your reasons why.

Background

On January 29, 1987, Senators Roth, Domenici, and others introduced S. 416, the Federal Budget Reform Act of 1987, that would institute a two-year federal budget cycle. The bill has been jointly referred to the Senate Committees on the Budget and on Governmental Affairs.

Answers:

1. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

> Yes, in theory. A biennial budget could conceivably allow legal services programs to engage in more thorough planning and priority-setting processes. In addition, guidelines for LSC's Management and Administration functions could be more reasonably and responsibly established.

2. Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission?

> The budget of the Legal Services Corporation has remained relatively stable, especially since FY 1985 when a near-freeze of funding was initiated by Congress. Additionally, because Legal Services Corporation Field Program grantees are considered by Congress to possess refunding rights, the Field Program function in the budget

is extremely stable. For FY 1987, Field Program grantees accounted for $261, 293,672 of the total $305,500,000 appropriated by Congress (Pub. L. 99-541).

3. What difficulties can you foresee in preparing and submitting a two-year budget to Congress?

A two-year budget would demand a more extensive analysis of shifts in poverty populations that can take place. However, if the Board of Directors were provided authority to establish an accurate calculation for fund distribution, such a problem could logistically be resolved.

Additionally, if Congress, during the two-year cycle, mandated specific changes in budget functions, the advantage of the two-year cycle would be undermined.

4. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

The experience in past Congressional budgets suggests that the stability in funding field program grantees makes any substantial savings unlikely.

RECESS

Senator RUDMAN. We will go into a short recess until the next chairman arrives. Thank you very much.

[Short recess.]

THE JUDICIARY

Judicial Conference

STATEMENT OF HON. CHARLES CLARK, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ACCOMPANIED BY:

DONALD E. O'BRIEN, CHIEF JUDGE, NORTHERN DISTRICT OF IOWA
L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Senator BUMPERS [presiding]. We will continue our hearing with the request of the Judiciary. The total amount requested for the Judiciary is $1,453,178,000.

On May 6, we heard the Supreme Court, and this morning, we review the remainder of the Judiciary accounts. We begin with the Judicial Conference and Judge Charles Clark, Chief Judge, Fifth Circuit and Chairman of the Budget Committee, who is accompanied by Chief Judge Donald O'Brien of the Northern District of Iowa and L. Ralph Mecham, Director of the Administrative Office of the United States Courts.

Judge Clark, your full prepared statement will be printed in the record, and we will be pleased if you and Judge O'Brien will give us a brief review, of the fiscal year 1988 request. The statements of Chief Judge Edward D. Re; Chief Judge Howard T. Markey; A. Leo Levin, Director of the Federal Judicial Center, and L. Ralph Mecham of the Administrative Office of the United States Courts will also be printed in the hearing record.

[The statements follow:]

STATEMENT OF EDWARD D. RE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you again on behalf of the United States Court of International Trade. It is also a pleasure to introduce the Clerk of the Court, Mr. Joseph E. Lombardi, who accompanies me today.

The appropriation requested for fiscal year 1988 is $8,211,000, an increase of $1,093,000, or approximately 15% over the $7,118,000 adjusted amount appropriated for fiscal year 1987.

Of the total increase, approximately 63%, $687,000, is for charges imposed by GSA for the Rental of Space, pursuant to the Public Buildings Act of 1972. The cost of four court security officers (CSO's) under the supervision of the United Marshals Service accounts for 12% ($129,000) of the requested increase.

The amount imposed by GSA for the Rental of Space for fiscal year 1988 is more than 25% higher than the amount appropriated for 1987. Of course, these charges are determined and imposed by the General Services Administration, and we have no part in arriving at the amounts charged. Nor, would I attempt to justify the increase imposed by GSA.

Under P.L. 99-466 (HR 2183, Section 3), the Court of International Trade Amendments Act, the United States Marshals Service, more specifically the United States Marshal for the Southern District of New York, is now responsible for the security for the courthouse, the judges and employees of the court, instead of the contract guard supplied by the General Services Administration.

One of the recommendations concerning security made to the Court by the U.S. Marshals Service was to upgrade the security staff. In its report, the U.S. Marshals Service stated that the security staff must be able to provide a deterrence and a response to any possible threat of aggression against the judges, court personnel, the public and the structure. Security officers must be properly trained and equipped to fulfill the security mission. To accomplish this, the U.S. Marshals Service recommended that contract guards furnished by the General Services Administration be replaced with court security officers (CSO's). This type of security would provide the Court with the same type of security that is provided to other U.S. Courthouses.

The balance of the requested items is as follows:

1) The annualization of the 1987 supplementals for pay costs and the new Federal Employees Retirement System requires $146,000 (including $79,000 for the 1987 executive pay raise).
2) The cost of within grade salary advancements requires $25,000.
3) The cost of one extra compensable day in fiscal year 1988 requires $11,000.
4) The cost of increases in contract rates and charges for services, supplies and equipment requires $40,000.
5) The cost of reimbursing GSA for the court's share of additional security requires $7,000.
6) The sum of $41,000 has been deducted in communications (telephones).
7) The cost of replacing one of the three judges eligible to assume senior status and continuing to function with assigned equipment, furniture and library requires $89,000 -- $72,000 will be non-recurring and $17,000 will be recurring.

I should like to emphasize to the Committee that the Court will continue to conserve its financial resources by controlling tightly those expenditures which it can control.

I previously submitted the Court's general statement and justification of changes which provide more detailed descriptions of the line items. If the Committee requires more information, we, of course, will be pleased to submit it, and, obviously to the extent we can, will answer any questions you may wish to ask.

STATEMENT

of

HOWARD T. MARKEY
Chief Judge

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

As in the past, the court has prepared a budget limited strictly to need. I begin with the mandatory items over which the court has no control. Again this year, the greatest segment by far of the requested increase is in GSA's rental payment of $2,790,000, an increase of $419,000. Though this unexplained 18% rent increase far outpaces the rate of inflation experienced in the economy, the court serves, as you know Mr. Chairman, as a mere conduit on this line item and will make no effort whatever to justify either the increase or the full rental figure of almost three million dollars for four floors. The overall increase of $1,178,000 includes $200,000 to restore personnel compensation and benefits reduced by Public Law 99-500. The $284,000 balance of the increase in personnel costs includes $31,000 for within-grade salary advancements, $11,000 for an extra compensable day (February 29th), $15,000 for unemployment compensation costs, $66,000 for two staff positions for a judge expected to take Senior Status, $27,000 for annualization of the 1987 pay increase, $3,000 for health benefits, and $13,000 for the government contribution to the new Federal Employees Retirement System and $118,000 for the executive pay raise. An increase of $77,000 is requested for equipment and furniture for the judge appointed to replace the judge eligible to take Senior Status. The increase of $36,000 for travel and miscellaneous services results from a 4% inflation factor for services and from the increased per diem rates authorized by the Judicial Conference.

The only non-mandatory request or program initiative is for $160,000 to enable the court to employ the Appellate Information Management System (New Aims) that will be supplied to all of the other Circuit Courts of Appeal in 1988.

STATEMENT OF
A. LEO LEVIN
DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, it is my privilege as Director of the Federal Judicial Center to present this statement in support of the Center's fiscal year 1988 appropriation request. The request has been reviewed and approved unanimously by the Board of the Federal Judicial Center, which is chaired by the Chief Justice of the United States.

Our Board has always been mindful of the necessity for fiscal restraint, while remaining faithful to the obligations imposed on the Center by statute. As you will see, more than half of the budget increase we are requesting results directly from the increase in judicial personnel to whom we are obligated to provide training services. As detailed below, the remainder of our requested increase results from legislation or from the effects of inflation and price increases.

Before turning to the specifics of our requests, I would like to report, once again, on the Center's use of temporary employees to meet the substantially increased computer systems development responsibilities assigned to the Center by the Five-Year Plan for Automation in the United States Courts. As was pointed out in my submissions of April 15, 1985, and May 7, 1986, to this subcommittee, the Center is meeting its increased development responsibilities by reallocating existing funding to employ additional temporary technical personnel. This decision was part of the Center's continuing effort to forego the need for any budget increase wherever possible.

I am pleased to report that we have, using this approach, made very substantial progress in completing our new development responsibilities. Indeed, we have already begun to reduce the number of temporary technical personnel employed, and we estimate that when the remaining major systems under development are completed and transferred to the Administrative Office in 1988, we will be able to phase out these temporary personnel completely. Until that time, we will continue to support this important function by internal funding transfers.

It should be emphasized that this reallocation of existing funding has not been without substantial cost. We have curtailed educational programs, deferred research programs and, in the effort to trim staff elsewhere in the Center, imposed obligations on existing personnel far beyond what is reasonable.

Fiscal 1988 Request

Permit me to turn to the specifics of our fiscal year 1988 request for $11,926,000 which represents a reduction of $72,000 from the amount requested in our original submission.

A little less than half of our requested increase--$504,000--results from the effects of inflation and the annualization of two items in our fiscal 1987 supplemental request. Announced GSA space rental fees account for $242,000. In addition, modest increases result from an extra compensable day in the fiscal year and increases in various charges such as printing, postage, and federal telecommunications user fees.

The $24,000 amendment to our FY-88 budget estimate proposed in a March 5, 1987 letter to you from the Director of the Administrative Office is also included in our request. This amount will provide for the full-year impact of increased pay rates recommended by the President on January 5, 1987, and approved on February 4, 1987.

The balance of the requested increase, $586,000, will allow the Center to fulfill its obligation to provide training for new federal court personnel (deputy clerks, probation/pretrial services officers, and probation/pretrial services clerical staff) that have been requested in the United States Court's fiscal year 1988 budget. Of this amount, $524,000 will enable these new court personnel to receive orientation training and thereafter, skill maintenance training. The remaining $62,000 will allow us to lease facilities and equipment to conduct seminars and workshops as well as provide for one new support position (GS-5 level) to accommodate this and other workload increases in the Education and Training Division.

In sum, the Center's fiscal year 1988 request will be devoted almost entirely to providing the necessary educational programs that are central to the Judicial Center's statutory mission.

If you or the other members of the Subcommittee have any questions about our request, we would be pleased to try to answer them.

STATEMENT

OF

L. RALPH MECHAM

DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY ONCE AGAIN TO PRESENT THE BUDGET ESTIMATES FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

MR. CHAIRMAN, OUR FISCAL YEAR 1988 BUDGET ESTIMATES ARE BASED PRIMARILY ON THE SUBSTANTIAL INCREASE IN THE WORKLOAD OF THE ADMINISTRATIVE OFFICE WHICH CONTINUES TO GROW INCREMENTALLY BECAUSE OF THE EVER INCREASING RESPONSIBILITIES CONFERRED UPON THE

JUDICIARY BY THE CONGRESS. AS THE JUDICIARY GROWS, THE ADMINISTRATIVE OFFICE'S RESPONSIBILITIES GROW. IT IS A DIRECT RELATIONSHIP SINCE WE ARE THE SERVICE ARM OF THE JUDICIAL BRANCH. HOWEVER, WE IN THE ADMINISTRATIVE OFFICE, THROUGH CONTINUING EFFORTS TO IMPROVE EFFICIENCY, HAVE BEEN ABLE TO LIMIT EXPANSION TO A CONSIDERABLY LOWER RATE THAN THAT FOR THE OVERALL JUDICIARY. CONSEQUENTLY, THE ADMINISTRATIVE OFFICE'S SHARE OF THE TOTAL JUDICIARY BUDGET CONTINUES TO DECLINE, FROM 2.7 PERCENT IN FISCAL YEAR 1986 TO 2.3 PERCENT IN THE PROPOSED FISCAL YEAR 1988 APPROPRIATION. PARALLEL REDUCTIONS ALSO OCCURRED IN THE ADMINISTRATIVE OFFICE'S PROPORTIONAL SHARE OF OVERALL JUDICIARY STAFFING FROM A FISCAL YEAR 1986 LEVEL OF 3.1 PERCENT TO 3.0 PERCENT IN FISCAL YEAR 1987 AND 2.8 PERCENT IN FISCAL YEAR 1988.

WHEN I TOOK OFFICE IN 1985 AS DIRECTOR, THERE WAS ONE ADMINISTRATIVE OFFICE PERSON FOR EACH THIRTY PERSONS IN THE JUDICIAL BRANCH. SINCE 1985, IN CONTRAST, WE HAVE ASKED FOR ONLY ONE ADMINISTRATIVE OFFICE STAFFER TO SERVE EACH NINETY PERSONS ADDED TO THE JUDICIAL BRANCH.

MOREOVER, WE ARE STUDYING THE POSSIBILITY OF FURTHER DECENTRALIZING ADDITIONAL ADMINISTRATIVE FUNCTIONS DIRECTLY TO THE CIRCUIT AND DISTRICT COURTS WHICH WE BELIEVE WILL INCREASE BOTH THE OVERALL OPERATING EFFICIENCIES OF THE JUDICIARY WHILE AT THE SAME TIME KEEP THE GROWTH OF THE ADMINISTRATIVE OFFICE STAFFING TO THE MINIMUM.

WHEN I LAST APPEARED BEFORE THIS COMMITTEE, I HAD

BEEN ON THE JOB JUST SLIGHTLY MORE THAN HALF A YEAR. I WAS OPERATING UNDER A MANDATE FROM THE THEN CHIEF JUSTICE OF THE UNITED STATES IN HIS CAPACITY AS PRESIDING OFFICER OF THE JUDICIAL CONFERENCE OF THE UNITED STATES TO EFFECT SUBSTANTIAL CHANGES IN ORDER TO IMPROVE THE PERFORMANCE OF THE ADMINISTRATIVE OFFICE AS A SERVICE AGENCY TO THE JUDICIARY. WE WERE DIRECTED TO OPERATE MORE EFFICIENTLY, MORE EFFECTIVELY, AND TO BE SURE THAT THE ADMINISTRATIVE OFFICE WAS STAFFED WITH THE BEST POSSIBLE PERSONNEL WHO WOULD ACHIEVE THOSE OBJECTIVES. I IMMEDIATELY LAUNCHED A SERIES OF INTERNAL STUDIES AND THE CHIEF JUSTICE IN ADDITION APPOINTED AN AD HOC COMMITTEE OF JUDGES TO STUDY THE EFFECTIVENESS OF THE ADMINISTRATIVE OFFICE IN SERVING THE NEEDS OF THE COURTS. BECAUSE OF THESE ONGOING STUDIES, I PROPOSED TO THIS COMMITTEE A YEAR AGO THAT HALF OF THE INCREASE IN PERSONNEL AUTHORIZED BY THE JUDICIAL CONFERENCE FOR FISCAL YEAR 1987 BE DEFERRED PENDING COMPLETION OF THE STUDIES ALREADY UNDERWAY. AT THE SAME TIME WE WISHED TO COOPERATE FULLY WITH THIS COMMITTEE IN ITS EFFORT TO MAKE SURE THAT EXPENDITURE INCREASES WERE CONFINED TO ABSOLUTE MINIMUM. EVEN THIS MINIMAL BUDGET WAS CUT BY 4.3 PERCENT AS A RESULT OF THE GRAMM-RUDMAN-HOLLINGS LEGISLATION.

DURING THE PAST YEAR WE HAVE MADE MANY CHANGES AT THE ADMINISTRATIVE OFFICE IN ORDER TO OPERATE MORE EFFICIENTLY AND EFFECTIVELY IN THE INTEREST OF THE JUDICIAL BRANCH. KEY PERSONNEL CHANGES HAVE TAKEN PLACE. IN ADDITION, WE ARE IMPROVING OUR RELATIONSHIP WITH GSA IN THE AREA OF FACILITIES FOR THE JUDICIARY.

A GREAT DEAL OF THE PROGRESS BEING MADE IS DUE TO THE GSA ADMINISTRATOR, TERRY GOLDEN. HE AND HIS PEOPLE HAVE BEEN WORKING VERY CLOSELY WITH US, AND THE RELATIONSHIP IS IMPROVING ON AN ALMOST DAILY BASIS.

TO PROMOTE THE MOST EFFECTIVE PLANNING FOR AND USE OF RESOURCES, WE HAVE ESTABLISHED GOALS AND OBJECTIVES FOR EACH COMPONENT WITHIN THE ADMINISTRATIVE OFFICE. WE HAVE ALSO ESTABLISHED A SET OF STANDARD OPERATING PROCEDURES, AND WE ARE TRAINING OUR PERSONNEL MORE EFFECTIVELY.

THE IMPORTANT AUTOMATION ACTIVITIES CONTINUE IN ACCORDANCE WITH ESTABLISHED PLANS. WHILE MOST OF OUR WORK TO DATE HAS GONE INTO AUTOMATION OF COURT ACTIVITIES, AUTOMATION OF ADMINISTRATIVE OFFICE FUNCTIONS IS ALSO OF IMPORTANCE. OUR BUDGETS WILL REFLECT OUR NEED FOR RESOURCES TO CONTINUE THIS WORK.

REORGANIZATION AND RESTRUCTURING OF THE ADMINISTRATIVE OFFICE CONTINUES. FOR EXAMPLE, CONSISTENT WITH PROPOSALS MADE BY THE AD HOC COMMITTEE OF JUDGES, WE PLAN TO ESTABLISH A JUDGES DIVISION. WE CURRENTLY HAVE DIVISIONS FOR CLERKS, PROBATION OFFICERS, BANKRUPTCY JUDGES, MAGISTRATES, AND OTHERS BUT NONE FOR ARTICLE III JUDGES. WE WILL MEET THIS OBJECTIVE, IN PART, BY SHIFTING EXISTING PERSONNEL AND RESOURCES BUT WE WILL NEED ADDITIONAL STAFF. TO MEET BETTER THE PLANNING NEEDS OF THE JUDICIARY, AND TO ANTICIPATE REQUIREMENTS, I PROPOSE TO INSTITUTE A SMALL PLANNING AND MANAGEMENT STAFF. AS INDICATED EARLIER, WE MUST ALSO BETTER EQUIP THE ADMINISTRATIVE OFFICE TO OPERATE MORE EFFECTIVELY BY USING COMPUTERS. WE MUST

RELY ON GREATER USE OF COMPUTERS AND AUTOMATION IN SUCH AREAS AS SPACE AND FACILITY INVENTORY AND PROJECTS, AND THE PAYROLL SYSTEM FOR THE ALMOST 20,000 PEOPLE WE SERVE.

WE ARE CONTINUING TO DEVELOP A CENTRALIZED ACCOUNTING SYSTEM WHICH, TOGETHER WITH THE COURTS FINANCIAL MANAGEMENT CAPABILITIES, WILL GREATLY IMPROVE OUR ACCOUNTING AND CONTROL PROCEDURES. WE WILL BE ABLE TO ESTABLISH COST CONTROL CENTERS THROUGHOUT THE COURT SYSTEM AND BE IN A MUCH BETTER POSITION TO DECENTRALIZE ACTIVITIES WHERE IT MAY BE DESIRABLE TO DO SO.

THE ADMINISTRATIVE OFFICE HAS DONE A GOOD JOB IN SUPPORTING THE COURTS. HOWEVER, IT IS BECOMING INCREASINGLY CLEAR THAT THIS AREA OF JUDICIARY ACTIVITY NEEDS TO BE CLOSELY ADDRESSED, AND IMPROVEMENTS MADE, SO THAT THE THIRD BRANCH CAN CONTINUE TO OPERATE EFFECTIVELY AND WITH INCREASING EFFICIENCY. OUR SUPPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, AND ITS COMMITTEE STRUCTURE, IS ESSENTIAL TO THE PROPER FUNCTIONING OF THE JUDICIARY. OUR REQUEST FOR RESOURCES REFLECTS THIS IMPORTANT RESPONSIBILITY.

FISCAL YEAR 1988 REQUEST

THE ADMINISTRATIVE OFFICE REQUEST FOR FISCAL YEAR 1988 TOTALS $33,666,000 AND REPRESENTS AN INCREASE OF $3,482,000 OVER 1987. "ADJUSTMENTS TO BASE" ACCOUNT FOR $2,654,000 OF THIS INCREASE, AND INCLUDE SUCH ITEMS AS INCREASES IN RENTAL RATES AND CONTINUING PAY RAISES AND INCREASES IMPLEMENTED IN FISCAL YEAR 1987. RESOURCES REQUIRED FOR WORKLOAD INCREASES AND NEW

PROGRAM INITIATIVES ESTIMATED AND PLANNED FOR FISCAL YEAR 1988 ACCOUNT FOR THE REMAINING $736,000 OF THE REQUEST.

IN PARTICULAR, $236,000 AND SIX POSITIONS WILL BE REQUIRED DUE TO THE RECENTLY ENACTED BANKRUPTCY LEGISLATION. THESE POSITIONS ARE REQUIRED AS A DIRECT RESULT OF THE ADMINISTRATIVE AND LOGISTICAL REQUIREMENTS OF THE 52 NEW BANKRUPTCY JUDGES, AND SUPPORTING STAFF, WHICH ARE AUTHORIZED BY PUBLIC LAW 99-554, THE BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMERS BANKRUPTCY ACT OF 1986. THE ADDED WORKLOAD ARISES FROM THE NEED FOR ADMINISTRATIVE AND LOGISTICAL SUPPORT TO THE NEW JUDGES, AND THEIR STAFFS, INCLUDING PROCESSING MORE PERSONNEL ACTIONS, AUDITING ADDITIONAL VOUCHERS, PROCESSING MORE REQUESTS FOR EQUIPMENT, FURNITURE, SUPPLIES, SPACE, AND ADDED PROGRAM SUPPORT.

ANOTHER $200,000 IS REQUIRED FOR TRAVEL RELATED TO THE FIVE-YEAR PLAN FOR AUTOMATION IN THE COURTS. THESE FUNDS ARE REQUESTED FOR SITE PREPARATION, INSTALLATION, TRAINING AND FOLLOW-UP VISITS TO COURTS SCHEDULED TO RECEIVE NEW HARDWARE AND NEW CASE MANAGEMENT AND OTHER TYPES OF ADMINISTRATIVE SOFTWARE USED IN THE DAY-TO-DAY BUSINESS OF COURT OPERATIONS. PREPARATION FOR HARDWARE INSTALLATION REQUIRES INTENSIVE WORK ON THE PART OF THE ADMINISTRATIVE OFFICE STAFF. NOW THAT MANY OF THE NEW SYSTEMS HAVE BEEN DEVELOPED, TESTED AND HAVE OR WILL SOON BECOME OPERATIONAL, RESOURCES ARE NEEDED TO VISIT SITES, TO BRIEF THE COURT STAFF ON WHAT THEY CAN EXPECT, AND TO ENSURE THAT THE SYSTEMS ARE INSTALLED

WITH THE LEAST AMOUNT OF DISRUPTION TO THE COURT. ON-SITE ASSISTANCE BY OUR TECHNICAL STAFF IS ESSENTIAL.

FINALLY, $300,000 OF THE $736 THOUSAND IS REQUIRED TO BEGIN A FIVE-YEAR REPLACEMENT PROGRAM OF OFFICE AUTOMATION EQUIPMENT FOR THE ADMINISTRATIVE OFFICE. THE EQUIPMENT REQUESTED WILL SIGNIFICANTLY IMPROVE THE EFFICIENCY OF THE ADMINISTRATIVE OFFICE. CURRENTLY MANY MICROCOMPUTER AND WORD PROCESSING SYSTEMS ARE NOT COMPATIBLE AND A GREAT DEAL OF MATERIAL MUST BE DUPLICATED AND REFORMATTED WITHIN AND BETWEEN OFFICES. JUST AS THE COURTS REQUIRE OFFICE AUTOMATION EQUIPMENT TO SERVE THE PUBLIC AND THE BAR EFFICIENTLY, SO TOO DOES THE ADMINISTRATIVE OFFICE REQUIRE SIMILAR EQUIPMENT COMPATIBLE WITH NEW COURT EQUIPMENT TO RENDER EFFICIENT, EFFECTIVE SERVICE TO THE COURTS.

OUR FISCAL YEAR 1987 SUPPLEMENTAL INCLUDED A REQUEST FOR 17 POSITIONS. THE HOUSE AND SENATE COMMITTEES APPROVED EIGHT POSITIONS TO SUPPORT BANKRUPTCY COURTS, PERSONNEL INCREASES AND ADP MODERNIZATION. THE COMMITTEES RECOMMENDED THAT THE REMAINING NINE POSITIONS FOR PLANNING AND SPACE AND FACILITIES ACTIVITIES BE DEFERRED UNTIL FISCAL YEAR 1988. THEREFORE THESE POSITIONS ARE INCLUDED IN OUR FISCAL YEAR 1988 BUDGET SUBMISSION.

MR. CHAIRMAN, I AM AWARE OF THE BUDGET CONSTRAINTS WITHIN WHICH YOUR SUBCOMMITTEE MUST OPERATE. BUT IN VIEW OF THE INCREASING WORKLOAD OF THE COURTS, WHICH HAVE BEEN MANDATED BY CONGRESS, I AM FULLY SATISFIED THAT OUR REQUESTS ARE NECESSARY. I LOOK FORWARD TO

WORKING WITH YOU AND THE SUBCOMMITTEE STAFF ON OUR BUDGET REQUEST DURING THE MONTHS AHEAD AND WILL BE PLEASED TO PROVIDE ANY FURTHER INFORMATION AND ANSWER QUESTIONS WHICH YOU OR YOUR SUBCOMMITTEE MAY HAVE.

PREPARED STATEMENT

Judge CLARK. Mr. Chairman, I know that there is a very short time available to us at this hearing. The principal concern that Judge O'Brien, Mr. Mecham and myself have is to answer questions that the Committee might have for us. I think that our statement is self-explanatory. You have highlighted the numbers involved, so at this time, unless you have some other wish, I would like to open ourselves for questions from you.

[The prepared statement of Judge Charles Clark follows:]

PREPARED STATEMENT OF JUDGE CHARLES CLARK

ON BEHALF OF THE
BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES

CHARLES CLARK, CHAIRMAN
CHIEF JUDGE, UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

SOLOMON BLATT, JR.
CHIEF JUDGE, UNITED STATES DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA

WILLIAM L. HUNGATE
UNITED STATES DISTRICT JUDGE, EASTERN DISTRICT OF MISSOURI

RALPH H. KELLEY
UNITED STATES BANKRUPTCY JUDGE, EASTERN DISTRICT OF TENNESSEE

THOMAS J. MESKILL
UNITED STATES CIRCUIT JUDGE, SECOND CIRCUIT

DONALD E. O'BRIEN
CHIEF JUDGE, NORTHERN DISTRICT OF IOWA

OWEN M. PANNER
CHIEF JUDGE, DISTRICT OF OREGON

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY ONCE AGAIN TO PRESENT TO YOU THE BUDGET ESTIMATES FOR THE OPERATION OF THE UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS FOR FISCAL YEAR 1988.

JUDGE DONALD E. O'BRIEN, CHIEF JUDGE OF THE NORTHERN DISTRICT OF IOWA, AND A MEMBER OF THE BUDGET COMMITTEE, APPEARS WITH ME TODAY.

MR. L. RALPH MECHAM, DIRECTOR OF THE ADMINISTRATIVE OFFICE, AND MEMBERS OF HIS STAFF WILL ALSO ASSIST ME IN THE PRESENTATION. WE SHALL ATTEMPT TO ANSWER ANY QUESTIONS YOU MAY HAVE AND

WILL PROVIDE ANY ADDITIONAL MATERIAL YOU MAY REQUIRE.

MR. CHAIRMAN, BEFORE I PRESENT OUR FUNDING REQUESTS FOR FISCAL YEAR 1988, MAY I OUTLINE TO YOU SEVERAL PARTICULARS THAT HAVE HAD AN UNUSUAL IMPACT ON THE BASE OF OUR APPROPRIATION.

UNUSUAL IMPACTS

RECENT ENACTMENTS WILL SOON REQUIRE THE JUDICIARY TO AUGMENT BOTH HUMAN AND MATERIAL RESOURCES.

THE FIRST NEW WORK ASSIGNMENT COMES FROM THE "WAR ON DRUGS." CRIMINAL CASES HAVE ALREADY CLIMBED 44 PERCENT IN THE YEARS FROM 1980 TO 1986. THEY NOW TOTAL 42,343. WHEN THE NEW EFFORT AGAINST ILLEGAL DRUGS BEGINS TO HAVE ITS IMPACT, FUTURE FILINGS WILL SHARPLY INCREASE. THESE PRIORITY CASES THREATEN TO DENY SOME COURTS' ABILITY TO HANDLE TAX COLLECTION, CIVIL RIGHTS, FEDERAL QUESTIONS AND OTHER SIGNIFICANT CIVIL LITIGATION. JUDGE POWER AND SUPPORTING STAFF WILL HAVE TO BE INCREASED.

A SECOND NEW WORK ASSIGNMENT IS SCHEDULED TO GO INTO EFFECT IN NOVEMBER. IT COMES FROM PASSAGE OF THE SENTENCING REFORM ACT OF 1984. UNDER GUIDELINE SENTENCING, THE PROBATION OFFICER AND THE PRESENTENCE INVESTIGATIVE REPORT WILL ASSUME AN EVEN MORE ESSENTIAL FUNCTION IN THE DETERMINATION OF A SENTENCE. WE CANNOT YET PREDICT THE NUMBER OF PROBATION OFFICERS AND CLERKS NEEDED TO CONDUCT THE INVESTIGATION AND PREPARE THE DRAFT REPORT, CONFER WITH THE PROSECUTOR AND DEFENSE COUNSEL IN AN EFFORT TO ELIMINATE THE DISPUTED ISSUES OF FACT, AND ATTEND COURT HEARINGS CONVENED TO RESOLVE FACT ISSUES AND IMPOSE SENTENCE, BUT WE CAN SAY THAT IT WILL BE CONSIDERABLE. IN ADDITION, THE GUIDELINES WILL INCREASE THE LENGTH OF SENTENCING HEARINGS, AND GENERATE APPEALS OF SENTENCES ABOVE OR BELOW THE GUIDELINES. GIVEN THEIR LIMITED FLEXIBILITY AND MECHANICAL NATURE, GUIDELINES MAY INCREASE THE NUMBER OF TRIALS. SUCH CHANGES WILL ALSO EXPAND SUBSTANTIALLY THE WORKLOAD OF THE FEDERAL PUBLIC DEFENDERS.

A THIRD NEW WORK ASSIGNMENT IS THE RECENTLY APPROVED IMMI-

GRATION ACT. WE CANNOT RELIABLY ESTIMATE THE IMPACT OF THIS LEGISLATION ON THE WORK OF THE COURTS AT THIS TIME, BUT FROM EXTENSIVE EXPERIENCE IN THIS AREA, WE CAN CONFIDENTLY SAY IT WILL SIGNIFICANTLY INCREASE FILINGS IN A NUMBER OF DISTRICTS.

LAST YEAR CONGRESS PASSED THE NATIONAL CHILDHOOD VACCINE INJURY LEGISLATION. THIS ACT CAN BE INTERPRETED TO HAVE THE UNIQUE EFFECT OF ESTABLISHING AN ENTITLEMENT PROGRAM ADMINISTERED BY THE JUDICIARY. IT REQUIRES THE APPOINTMENT OF A SPECIAL MASTER IN EVERY CASE. THE CENTERS FOR DISEASE CONTROL HAS ESTIMATED THAT THE MINIMUM NUMBER OF CLAIMS FILED WOULD BE IN EXCESS OF 9,000 ANNUALLY. SINCE MANY OF THE COMPENSABLE EFFECTS CAN OCCUR DUE TO UNKNOWN CAUSES AND BECAUSE COVERAGE INCLUDES INJURIES SUSTAINED AT ANY TIME IN THE PAST, THE NUMBER OF NEW COURT CASES IS LIKELY TO BE HIGHER THAN 9,000. THE EFFECTIVE DATE OF THE PROGRAM IS TIED TO THE IDENTIFICATION OF FUNDING FOR THE BENEFITS. ONCE FUNDING IS PROVIDED, THIS NEW PROGRAM WILL HAVE A SUBSTANTIAL IMPACT ON JUDICIAL PERSONNEL AND RESOURCES.

DURING THE PAST 20 YEARS, NEW LEGISLATION HAS PROGRESSIVELY INCREASED THE JUDICIARY'S WORKLOAD. NEW JUDGESHIPS AND LARGER APPROPRIATIONS HAVE NOT ENABLED OUR BRANCH TO KEEP UP WITH THE NEW WORKLOAD LEVELS. THE LAG TIME IN APPROVAL OF ADDITIONAL RESOURCES HAS MEANT THE JUDICIARY MUST CONSTANTLY "RACE TO CATCH UP" WITH DEMANDS FROM THE PUBLIC AND BAR FOR SERVICES. ANY NEW LEGISLATION WHICH ADDS NEW CAUSES OF ACTION OR DUTIES OR EXPANDS FEDERAL JURISDICTION SHOULD NOT BE APPROVED WITHOUT CONGRESSIONAL CONSIDERATION OF ITS IMPACT ON THE JUDICIARY AND APPROPRIATED FUNDS. THE JUDICIARY STRONGLY ENDORSES A REQUIREMENT THAT "JUDICIAL IMPACT STATEMENTS" ACCOMPANY ANY LEGISLATION WHICH COULD REASONABLY BE EXPECTED TO GENERATE SIGNIFICANT CASE FILINGS OR CREATE NEW JURISDICTION, SERVICES, OR DUTIES. FOR THE JUDICIARY TO SERVE THE PUBLIC AND THE BAR PROPERLY, CONGRESS MUST ANTICIPATE THE INCREASED COSTS TO THE JUDICIARY ASSOCIATED WITH THE ENACTMENT OF LEGISLATION AND MAKE APPROPRIATE ADJUSTMENTS DURING THE BUDGETARY PROCESS.

ANOTHER MATTER, WHICH DESERVES THE COMMITTEE'S ATTENTION -- AN INCREASINGLY SERIOUS ONE IN TERMS OF THE LIFE AND BUSINESS OF ALL OF OUR CITIZENS - IS THE BURGEONING GROWTH IN BANKRUPTCY FILINGS. EACH YEAR WE HAVE BEEN FACED WITH ASTRONOMICAL GROWTH IN THE RATE OF BANKRUPTCY PETITIONS FILED. THE NEW 1986 HIGH IS 507,557 PETITIONS. THAT HUGE INCREASE IS PROVING A SERIOUS BURDEN ON THE COURTS OF THIS COUNTRY. WE HAVE BEEN UNABLE TO INCREASE THE SIZE OF THE SYSTEM, OR ITS CAPACITY, RAPIDLY ENOUGH TO AVOID MAJOR BACKLOGS IN MOST DISTRICTS. UNLESS NEW JUDGESHIPS ARE FUNDED AND ADEQUATE SUPPORTING PERSONNEL ARE AUTHORIZED, THIS DENIAL OF CITIZEN'S RIGHTS TO AN ADEQUATE BANKRUPTCY REMEDY WILL INCREASE. AS A RELATED ISSUE, ONCE THESE 52 NEW JUDGES TAKE OFFICE, THE DISTRICT COURTS WILL EXPERIENCE AN INCREASE IN APPEALS FROM BANKRUPTCY JUDGE RULINGS. WE EXPECT THAT THE INCREASE IN APPEALS WILL CORRESPOND DIRECTLY TO THE 22 PERCENT INCREASE IN AUTHORIZED JUDGESHIPS.

THE NUMBER OF CRIMINAL ACTIONS INVOLVING PERSONS FINANCIALLY UNABLE TO OBTAIN ADEQUATE REPRESENTATION HAS GROWN OVER THE YEARS. ANOTHER REQUEST I WILL SEEK TO JUSTIFY TODAY INVOLVES MORE FINANCIAL HELP FOR OUR FEDERAL DEFENDER PROGRAM.

THE JUDICIARY HAS NO CONTROL OVER WORKLOAD INCREASES. UNLESS CONGRESS IS WILLING TO REDUCE THE JURISDICTION OF THE FEDERAL COURT SYSTEM WE CAN ONLY PROVIDE YOU WITH ACCURATE INFORMATION AS TO OUR GROWING NEEDS AND RELY ON YOUR UNDERSTANDING AND CONCERN TO HELP US SOLVE THESE VERY DIFFICULT PROBLEMS.

YOUR COMMITTEE LAST YEAR RESTRICTED STAFFING OF OUR SUPPORTING PERSONNEL IN CLERK'S AND PROBATION SERVICES OFFICES TO 94 PERCENT OF THE STAFFING NECESSARY TO CARRY OUT OUR RESPONSIBILITIES AS MEASURED UNDER APPROVED WORKLOAD FORMULAS. THIS RESTRICTION WAS AN OUTGROWTH OF AN EMERGENCY MEASURE INSTITUTED BY THE JUDICIAL CONFERENCE TO MANAGE THE MID-YEAR REDUCTIONS IN OUR FUNDING RESULTING FROM THE GRAMM-RUDMAN-HOLLINGS LEGISLATION. OVER THE SHORT RUN, THE COURTS HAVE BEEN ABLE TO DEFER SOME FUNCTIONS WHICH CANNOT BE PERMANENTLY SET

ASIDE. IF RESTRICTED STAFFING IS CONTINUED ANY LONGER, IT WILL HAVE SERIOUS REPERCUSSIONS.

INADEQUATE STAFFING MEANS DELAY IN ALL PHASES OF THE JUDICIAL PROCESS FROM ADEQUACY OF RESPONSES TO REQUESTS FOR INFORMATION, TO FILING, DOCKETING, AND CLOSING CASES. THE BANKRUPTCY COURTS HAVE THE MOST SERIOUS PROBLEM BECAUSE THEIR CASELOAD HAS EXPERIENCED SUCH DRAMATIC INCREASES. IN THOSE COURTS EVEN FULL-FORMULA STAFFING WOULD RESULT IN CASELOAD PROCESSING DELAYS. THEY ARE GREATLY ACCENTUATED BY PRESENT REDUCTIONS. WE, THEREFORE, ASK THAT THE BUDGET REQUESTS FOR DEPUTY CLERKS AND PROBATION OFFICERS BE FUNDED IN ACCORDANCE WITH WORK MEASUREMENT FORMULAS SO ONCE AGAIN THE STAFF IN EACH COURT CAN PERFORM IN ACCORDANCE WITH THE INTENT OF THE LAW.

BUDGET AMENDMENT

MR. CHAIRMAN, WE HAVE TRANSMITTED TO YOU TWO BUDGET AMENDMENTS FOR FISCAL YEAR 1988. THE FIRST, IN THE AMOUNT OF $10,403,000, MAKES PROVISION FOR THE PAY RAISES RECOMMENDED BY THE PRESIDENT UNDER THE FEDERAL SALARY ACT. THE SECOND, IN THE AMOUNT OF $7,500,000, PROVIDES FOR CONSTRUCTION OF COURT FACILITIES RELATED TO THE 52 NEW BANKRUPTCY JUDGESHIPS AUTHORIZED BY PUBLIC LAW 99-554.

WE HAVE ESTIMATED THE COST OF CONSTRUCTION OF THESE NEW BANKRUPTCY FACILITIES TO BE $18 MILLIION, OF WHICH $10.5 MILLION ARE COSTS NORMALLY BORNE BY THE JUDICIARY. THESE COSTS INCLUDE: (1) SPECIAL REQUIREMENTS OF COURT FACILITIES SUCH AS WALL COVERINGS, RAILINGS, SOUND EQUIPMENT, BUILT-IN SHELVING, AND THE LIKE; (2) CONSTRUCTION COSTS WHENEVER A NEW JUDGESHIP FACILITY IS TO BE LOCATED IN JUDICIARY OCCUPIED SPACE; (3) RELOCATION COSTS WHEN OTHER AGENCIES ARE DISPLACED BY JUDICIARY SPACE REQUIREMENTS; AND (4) DESIGN COSTS FOR THE 52 NEW FACILITIES. WE ANTICIPATE THAT $3 MILLION OF THE MONIES AUTHORIZED IN OUR 1987 SUPPLEMENTAL WILL BE AVAILABLE FOR DESIGN AND ALTERATION OF

THESE FACILITIES. THEREFORE, $7.5 MILLION OF THE $10.5 MILLION IN JUDICIARY COSTS IS BEING REQUESTED IN THIS AMENDMENT FOR 1988. THE REMAINDER OF THE $18 MILLION TOTAL ESTIMATED COSTS ARE THE GENERAL SERVICES ADMINISTRATION'S RESPONSIBILITY AND SHOULD BE FUNDED ACCORDINGLY.

THE COURTS WOULD PREFER TO USE GSA CAPABILITIES FOR THE DESIGN OF THE NEW FACILITIES WHEN AND WHERE THEIR SERVICES ARE AVAILABLE FOR SPEEDY COMPLETION OF PROJECTS. HOWEVER, TO ASSURE THAT THIS EMERGENCY WORK WILL BE DONE QUICKLY, WE HAVE PROPOSED THAT GSA SHOULD DELEGATE TO THE JUDICIARY DESIGN AUTHORITY FOR PARTICULAR PROJECTS. THESE WOULD BE CASES WHERE GSA AND THE JUDICIARY AGREE THAT COMPLETION OF THE PROJECT WOULD BE MORE EFFICIENTLY HANDLED OR THAT COSTLY CHANGE ORDERS COULD BE REDUCED.

FISCAL YEAR 1988 BUDGET REQUEST

OUR BUDGET REQUESTS FOR 1988 REPRESENT THE MINIMUM INCREASES CONSISTENT WITH THE GROWING WORKLOAD OF THE COURTS. THE BUDGET REQUIREMENTS FOR THE COURTS OF APPEALS AND DISTRICT COURTS, AS AMENDED, TOTAL $1,374,378,000, $166.0 MILLION AND 1,702 POSITIONS OVER FISCAL YEAR 1987 AS ADJUSTED FOR SUPPLEMENTAL REQUESTS. THIS REPRESENTS AN INCREASE OF 13.7 PERCENT OVER THE 1987 FIGURE. ADJUSTMENTS TO BASE, I.E., THE INCREASED COST OF TRAVEL, TELEPHONE RATES, SPACE RENTAL, PRINTING, SUPPLIES, LAWBOOKS, AND FURNITURE AND FURNISHINGS, ACCOUNT FOR $95,560,000, OR 57.6 PERCENT OF THIS INCREASE. WORKLOAD INCREASES AND NEW PROGRAM INITIATIVES ACCOUNT FOR $70,460,000 OR 42.4 PERCENT OF THE REQUESTED INCREASE. THE ADDITIONAL 1,702 POSITIONS INCLUDED IN THE REQUEST REPRESENT AN INCREASE OF 8.8 PERCENT OVER THE POSITIONS APPROVED IN FISCAL YEAR 1987.

INCREASED CASELOAD

INCREASES IN THE JUDICIARY CASELOADS ARE SHOWN ON THE SIX-YEAR TABLE AT ATTACHMENT 1. CASES APPEALED INCREASED BY 49 PERCENT (11,401 CASES) IN SIX YEARS FROM 1980 TO 1986. APPEALS NOW TOTAL 34,605 ANNUALLY. I SEE NO SIGNS, MR. CHAIRMAN, THAT THIS STEADY INCREASE IN WORK WILL ABATE.

THE COMBINED TOTAL OF CIVIL AND CRIMINAL CASE FILINGS IN DISTRICT COURTS INCREASED FROM 200,733 CASES IN FISCAL 1980 TO 289,076 CASES IN FISCAL 1986. THIS IS A 44 PERCENT GROWTH IN SIX YEARS, AN ENORMOUS INCREASE BY ANY STANDARD OF MEASUREMENT.

THE GREATEST WAVE OF BANKRUPTCIES IN THE HISTORY OF OUR COUNTRY HAS SIMPLY INUNDATED THE FEDERAL JUDICIARY. BETWEEN 1980 AND 1986, BANKRUPTCY FILINGS GREW BY 207,586 CASES. AND DESPITE AN INCREASE OF 100 PERCENT IN TERMINATIONS DURING THAT SAME PERIOD, THE BACKLOG OF PENDING CASES INCREASED 94 PERCENT, OR 365,835 CASES.

UNITED STATES MAGISTRATES HAVE GREATLY INCREASED THE NUMBER OF CASES HANDLED OVER THE SIX-YEAR PERIOD FROM FISCAL 1980 TO THE END OF FISCAL 1986. THEIR CRIMINAL TRIAL JURISDICTION CASES GREW THE LEAST OVER THAT PERIOD FOR A TOTAL OF ONLY 1,168. CIVIL TRIAL JURISDICTION CASES GREW BY THE LARGEST PERCENTAGE, 726 PERCENT, WHICH REPRESENTS AN INCREASE OF 4,334 CASES. PRELIMINARY FELONY PROCEEDINGS MOVED UP 49 PERCENT, FOR A TOTAL OF 42,495 CASES. HOWEVER, CASES GROUPED IN THE CATEGORY "OTHER CRIMINAL AND CIVIL MATTERS" JUMPED 110 PERCENT, FOR A GAIN OF 115,134 CASES. NOTHING BETTER REPRESENTS THE VALUE OF THE SERVICE RENDERED BY OUR MAGISTRATES THAN THESE FIGURES. WITHOUT MAGISTRATES MANY DISTRICTS COULD NOT MANAGE THEIR CASELOAD. THESE FIGURES ARE ALSO PRESENTED IN THE TABLE AT ATTACHMENT 1.

THE PROBATION SERVICE HAS EXPERIENCED A GROWTH OF 7,506 PERSONS RECEIVED FOR SUPERVISION SINCE FISCAL 1980, FOR A 24 PERCENT INCREASE. PRESENTENCE INVESTIGATIONS CLIMBED 53 PERCENT OR 12,459 CASES IN THE SIX-YEAR TIME SPAN. THESE AND OTHER

FIGURES RESPECTING THE PROBATION CASELOAD ARE ALSO SHOWN IN THE TABLE AT ATTACHMENT 1.

PETITIONS FOR NATURALIZATION INCREASED 95 PERCENT SINCE JUNE 1980 AND THE NUMBER OF ALIENS NATURALIZED ROSE 118,958. WHEN THE AMNESTY PROVISIONS OF THE NEW IMMIGRATION LEGISLATION BECOME OPERATIVE, MANY MORE NATURALIZATION MATTERS WILL COME BEFORE THE COURTS.

DETAILS OF APPROPRIATIONS REQUESTED FOR FISCAL YEAR 1988

OUR REQUEST OF $1,374,378,000 FOR FISCAL YEAR 1988 REPRESENTS AN INCREASE OF $166,020,000 OVER FISCAL YEAR 1987 AS ADJUSTED FOR SUPPLEMENTAL REQUESTS. THIS INCREASE CONSISTS OF $95,560,000 FOR ADJUSTMENTS-TO-BASE AND $70,460,000 FOR WORKLOAD INCREASES AND NEW PROGRAM INITIATIVES. THESE REQUIREMENTS CONSIST OF 1,702 POSITIONS: 52 FOR THE MAGISTRATE SYSTEM, 1,118 DEPUTY CLERKS AND SUPPORT STAFF FOR THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS, 471 FOR PROBATION AND PRETRIAL SERVICES, 20 FOR THE NATIONAL COURT LIBRARY SYSTEM, 15 FOR THE FEDERAL PUBLIC DEFENDER OFFICES, 8 POSITIONS FOR COURT SECURITY, AND 18 POSITIONS TO COVER THE ANTICIPATED INCREASE IN THE NUMBER OF SENIOR JUDGES. TO REFLECT THE PHASE-IN OF THESE NEW POSITIONS, OUR 1988 REQUEST FOR DEPUTY CLERKS AND PROBATION SERVICE PERSONNEL INCLUDES FUNDING FOR ONLY 60 PERCENT OF THE FULL YEAR COST.

SALARIES AND EXPENSES

MR. CHAIRMAN, OUR REQUEST FOR THE ACTIVITY "SALARIES OF JUDGES" IS BASED ON JUDGESHIP POSITIONS, ANTICIPATED VACANCIES IN NEWLY CREATED POSITIONS, RETIREMENTS, AND THE NUMBER OF JUDGES TAKING SENIOR STATUS. OUR FISCAL YEAR 1988 REQUEST REPRESENTS AN INCREASE OF $10,082,000 OVER 1987.

WE ESTIMATE THAT IN FISCAL YEAR 1988 THERE WILL BE AN

AVERAGE OF 28 JUDGESHIP VACANCIES. IN ADDITION, PROVISION HAS BEEN MADE FOR AN AVERAGE NET INCREASE OF SEVEN JUDGES IN SENIOR STATUS IN FISCAL YEAR 1988. A TOTAL OF 106 JUDGES WILL BE ELIGIBLE TO TAKE SENIOR STATUS.

IN THE REQUEST "SALARIES OF SUPPORTING PERSONNEL," WE SEEK FUNDS TO PAY CLERKS, DEPUTIES, PROBATION AND PRETRIAL OFFICERS, MAGISTRATES, AND OTHER SUPPORT STAFF. THE 1988 REQUEST FOR $620,831,000 IS AN INCREASE OF $75,736,000 OVER 1987. IT INCLUDES $45,376,000 FOR ADJUSTMENTS TO THE BASE, AND 1,679 ADDITIONAL SUPPORTING PERSONNEL FOR THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS. A SUMMARY OF THESE ADDITIONAL POSITIONS IS CONTAINED ON PAGE 5.8 OF OUR BUDGET JUSTIFICATIONS.

A TOTAL OF 1,118 POSITIONS IS REQUIRED JUST TO HANDLE THE INCREASED WORKLOAD IN CIRCUIT, DISTRICT, AND BANKRUPTCY COURT CLERKS' OFFICES. TO PERFORM PROBATION AND PRETRIAL SERVICES, WE NEED 471 ADDITIONAL POSITIONS. THE NEED FOR THE ADDED PERSONNEL IS BASED ON THE APPLICATION OF APPROVED STAFFING FORMULAS AND PROJECTED WORKLOADS.

DEPUTY CLERKS

THE VAST BULK OF THE REQUIREMENT FOR ADDITIONAL DEPUTY CLERKS COMES AS A RESULT OF THE ENORMOUS INCREASE IN BANKRUPTCY FILINGS. OF THE TOTAL OF 1,118 POSITIONS, WE ARE REQUESTING, MR. CHAIRMAN, 825 OF THESE ARE FOR THE BANKRUPTCY COURTS. THUS, BANKRUPTCY NEEDS 74 PERCENT OF THE NEW POSITIONS WE ARE REQUESTING. AS I SAID A FEW MINUTES AGO, THE BACKLOG OF PENDING CASES IN THE BANKRUPTCY COURTS OF THIS COUNTRY HAS GROWN SO RAPIDLY THAT WE HAVE NOT BEEN ABLE TO STAFF BANKRUPTCY COURTS AT THE 94 PERCENT LEVEL APPROVED BY YOUR COMMITTEE. THE LEVEL IS MORE NEARLY 80 OR 85 PERCENT OF THE LEVEL SET BY WORKLOAD FORMULA. THESE COURTS NEED TO SECURE ADEQUATE FUNDING FOR STAFF AND EQUIPMENT NOW.

WE ARE REQUESTING AN ADDITIONAL 36 DEPUTY CLERKS FOR THE

COURTS OF APPEALS AND 254 FOR THE DISTRICT COURTS. IN TERMS OF PERCENTAGES, THE DISTRICT COURTS WILL RECEIVE 23 PERCENT OF THE POSITIONS AND THE COURTS OF APPEALS WILL RECEIVE 3 PERCENT. A SIGNIFICANT REASON FOR THE REQUEST FOR THE INCREASE IN POSITIONS FOR DISTRICT AND APPEALS COURTS IS, AS I REMARKED EARLIER, A DIRECT RESULT OF THE "WAR ON DRUGS" AND THE EXPECTED INFLUX OF IMMIGRATION AND IMMIGRATION RELATED CASES.

WE REQUEST 36 POSITIONS FOR COURTS OF APPEALS CLERKS' OFFICES BASED ON THE PROJECTED GROWTH IN FILINGS, FROM 34,605 IN 1986 TO 37,000 IN 1987 AND 38,000 IN 1988. THE RATIO APPROVED BY THE JUDICIAL CONFERENCE AND USED AS A GUIDELINE SINCE 1973 IS A RATIO OF 75 APPELLATE FILINGS PER DEPUTY CLERK.

SOCIAL SECURITY CASES AND ACTIONS FILED WITH THE DISTRICT COURTS TO RECOVER OVERPAYMENTS ACCOUNT FOR MUCH OF THE GROWTH IN CIVIL CASELOAD IN DISTRICT COURTS DURING THE PAST FEW YEARS. HOWEVER, RECOVERY OF OVERPAYMENT CASES ARE EXPECTED TO DECLINE AND EVENTUALLY BECOME LEVEL AT 30,000 PER YEAR THROUGH FISCAL YEAR 1988. SOCIAL SECURITY CASES, WHICH MORE THAN DOUBLED FROM 1982 TO 1984, DECLINED TO 20,104 IN 1985. THEY ARE EXPECTED TO LEVEL OFF AT 20,000 CASES IN 1988. ALL OTHER CIVIL FILINGS ARE EXPECTED TO INCREASE SIGNIFICANTLY IN 1988 BASED ON HISTORICAL TRENDS IN THIS CATEGORY.

FOR FISCAL YEAR 1988, AN ADDITIONAL THREE POSITIONS ARE REQUESTED FOR THE BANKRUPTCY APPELLATE PANEL IN THE NINTH CIRCUIT. THIS CIRCUIT, THE ONLY ONE TO ESTABLISH A BANKRUPTCY APPELLATE PANEL, PURSUANT TO 28 U.S.C. 158(B), RECENTLY REVISED ITS RULES TO PROVIDE FOR REFERRAL OF APPEALS FROM BANKRUPTCY JUDGES' DECISIONS TO THE BANKRUPTCY APPELLATE PANEL UNLESS EITHER PARTY EXERCISES ITS RIGHT TO HAVE THE APPEAL HEARD BY THE DISTRICT COURT. IT IS EXPECTED THAT THE NUMBER OF APPEALS HANDLED BY THE PANEL WILL INCREASE TO ABOUT 1,050 PER YEAR.

PROBATION SERVICE

OUR REQUEST INCLUDES 471 ADDITIONAL PROBATION AND PRETRIAL SERVICE POSITIONS: 317 OFFICERS AND 154 CLERKS. PERSONS UNDER SUPERVISION INCREASED BY 12 PERCENT BETWEEN FISCAL YEARS 1980 AND 1986, AND THE NUMBER OF INVESTIGATIVE REPORTS INCREASED 24 PERCENT FROM 112,979 IN FISCAL YEAR 1980 TO 139,941 IN FISCAL 1986.

MR. CHAIRMAN, WE REQUEST THE COMMITTEE TO NOTE THE DILEMMA CREATED BY YOUR PREVIOUS REPORT LANGUAGE IN THE PRETRIAL SERVICES AREA. THE "METROPOLITAN" LANGUAGE (A TERM USED BY THE FEDERAL JUDICIAL CENTER FOR SEMINARS ARBITRARILY FIXED AT 6 OR MORE JUDGES) HAS CREATED PROBLEMS IN SOME DISTRICTS THAT HAVE 6 OR MORE JUDGES, BUT ARE DECIDEDLY NOT METROPOLITAN. THESE DISTRICTS ARE SOUTH CAROLINA, CONNECTICUT, THE EASTERN DISTRICT OF TEXAS AND THE WESTERN DISTRICT OF LOUISIANA. AT THE MARCH PROCEEDINGS, THE JUDICIAL CONFERENCE CONCLUDED THAT WHERE A HIGH VOLUME OF BAIL HEARINGS IS CONCENTRATED IN ONE OR MORE LOCATIONS AND THE CRIMINAL CASELOAD IS SUBSTANTIAL, IT IS MORE EFFICIENT TO DELIVER PRETRIAL SERVICES THROUGH A SEPARATE OFFICE. THE CONFERENCE HAS STRONGLY RECOMMENDED THAT SUCH DISTRICTS ESTABLISH A SEPARATE OFFICE UNDER THE CURRENT LAW. CONVERSELY, AS WITH THOSE DISTRICTS MENTIONED ABOVE, WHERE THE BAIL ACTIVITY IS SMALL AND SPREAD OUT IN SEVERAL LOCATIONS AND THE CRIMINAL CASELOAD IS NOT SUBSTANTIAL, IT IS MORE EFFICIENT TO DELIVER PRETRIAL SERIVCES THROUGH THE PROBATION OFFICE. WE BELIEVE, THEREFORE, THAT THE USE OF RESTRICTIVE LANGUAGE IN THE APPROPRIATIONS PROCESS SHOULD BE ELIMINATED, AND THAT ANY RESTRICTIVE LANGUAGE OR CONTROL OF THE IMPLEMENTATION OF THE PRETRIAL SERVICES ACT SHOULD BE ACCOMPLISHED BY AMENDING THE SUBSTANTIVE LEGISLATION.

MAGISTRATES

TWELVE NEW MAGISTRATES WILL BE NEEDED. OF THESE 12 POSITIONS, 11 WILL BE ESTABLISHED BY THE CONVERSION OF 13 PART-

TIME POSITIONS AND ONE WILL BE A NEWLY CREATED FULL-TIME MAGISTRATE. THERE ARE A TOTAL OF 52 POSITIONS INCLUDED IN THIS REQUEST. FORTY POSITIONS WILL GO TO LEGAL ASSISTANTS, SECRETARIES, AND CLERICAL ASSISTANTS ESTABLISHED AS SUPPORT PERSONNEL FOR THE MAGISTRATES. THE CONFERENCE HAS TAKEN A DELIBERATELY CONSERVATIVE POSITION IN AUTHORIZING THE CREATION OF NEW MAGISTRATES AND HAS LIMITED SUCH AUTHORIZATIONS TO THOSE COURTS IN WHICH THE WORKLOAD AND OTHER FACTORS CREATE A COMPELLING NEED FOR ADDITIONAL RESOURCES. THE SUCCESSFUL USE OF MAGISTRATES TO RELIEVE CASELOAD PRESSURES HAS BEEN RECOGNIZED AND IS CONTINUING TO EXPAND THROUGHOUT THE COUNTRY.

NATIONAL COURT LIBRARY SYSTEM

THE EXPANSION OF THE NATIONAL COURT LIBRARY SYSTEM CONTINUES, CONSISTENT WITH THE RECOMMENDATIONS OF YOUR COMMITTEE. IN FISCAL YEAR 1988, THE NATIONAL COURT LIBRARY SYSTEM WILL HAVE COMPLETED SEVEN YEARS OF OPERATION. WE EXPECT TO COMPLETE THE STAFFING OF THIS SYSTEM BY 1991 WITH NEARLY EQUAL INCREMENTS OF PERSONNEL EACH YEAR. THE AIMS OF THIS PROGRAM ARE TO IMPROVE THE LEVEL OF SERVICE TO JUDGES AND MINIMIZE INCREASES REQUIRED FOR LIBRARY ACCESSION AND CONTINUATION MATERIAL THROUGH BETTER MANAGEMENT. THE REQUEST OF 20 POSITIONS FOR 1988 IS THE SAME AS IN FISCAL 1987.

OPERATION AND MAINTENANCE OF THE COURTS

OUR REQUEST FOR FISCAL YEAR 1988 FOR THE ACTIVITY "EXPENSES OF OPERATION AND MAINTENANCE" OF THE COURTS INCLUDES UNDER NEW PROGRAM INITIATIVES $1.1 MILLION TO CONTINUE THE SIX-YEAR TELECOMMUNICATIONS PLAN; $9.5 MILLION TO CONTINUE IMPLEMENTATION OF THE COURT AUTOMATION PROGRAM; AND $100,000 FOR TRAINING OF SYSTEMS ADMINISTRATORS. AN ADDITIONAL $100,000 IS REQUESTED FOR FIREARMS TRAINING OF PROBATION AND PRETRIAL SERVICES OFFICERS.

MR. CHAIRMAN, OUR AUTOMATED SYSTEMS ARE ENJOYING MUCH SUCCESS, BUT ARE STILL BEING DEVELOPED AND INSTALLED. WE ASK THAT YOU AND THE MEMBERS OF YOUR COMMITTEE CONSIDER THIS REQUEST WITH FULL APPRECIATION THAT THE JUDICIARY MUST MODERNIZE THE WAY IN WHICH IT DOES BUSINESS IF IT IS TO COPE WITH FUTURE CASELOADS. THE DETAILS OF OUR AUTOMATION REQUEST CAN BE FOUND ON PAGES 5.51 THROUGH 5.54 OF OUR BUDGET JUSTIFICATION.

THE BUDGET ESTIMATE FOR THE ACTIVITY "SPACE AND FACILITIES" INCLUDES AN INCREASE OF $4,295,000 FOR SPACE RENTAL CHARGES INCIDENT TO OCCUPANCY OF EXPANDED OR REMODELED FACILITIES, $3,810,000 FOR SPACE RELATED TO PROSPECTUS PROJECTS, AND $7,500,000 FOR FACILITIES CONSTRUCTION FOR THE NEW BANKRUPTCY JUDGESHIPS.

MR. CHAIRMAN, THE REQUIREMENTS OF GSA MANDATE THAT WE REQUEST ALMOST $205.7 MILLION FOR OFFICE SPACE RENTAL CHARGES IN 1988, EXCLUSIVE OF REQUIREMENTS FOR NEW PERSONNEL. OUR REQUEST REPRESENTS AN INCREASE OF 17.6 PERCENT OVER THE ESTIMATED FISCAL YEAR 1987 SPACE RENTAL COSTS. WE KNOW YOUR COMMITTEE WILL CONSIDER THESE LARGE INCREASES CAREFULLY AND CAUTIOUSLY IN LIGHT OF THE FACT WE CANNOT CONTROL THIS REQUEST.

DEFENDER SERVICES

OUR REQUEST FOR FISCAL YEAR 1988 IN THIS APPROPRIATION REPRESENTS AN INCREASE OF $8,082,000 OVER 1987. THIS "NO YEAR" APPROPRIATION IS SUBJECT TO LITTLE CONTROL SINCE OUR REQUIREMENTS ARE BASED ON THE NUMBER OF PERSONS WHO MUST BE REPRESENTED UNDER THE CRIMINAL JUSTICE ACT. REPRESENTATION UNDER THE ACT CONTINUES TO INCREASE DUE TO INCREASES IN CRIMINAL FILINGS PARTICULARLY IN LIGHT OF THE OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT OF 1986. THE INCREASINGLY COMPLEX NATURE OF THE CASES IN SUCH AREAS AS FRAUD, EMBEZZLEMENT, AND HIGH TECHNOLOGY ALSO CONTRIBUTES TO INCREASES IN THE AVERAGE CASE COST.

FEES OF JURORS AND COMMISSIONERS

WE ARE REQUESTING THE SAME SUM, $52,135,000, IN BUDGET AUTHORITY FOR FISCAL YEAR 1988 AS WAS AUTHORIZED IN 1987 TO COVER THE FEES OF JURORS AND COMMISSIONERS. MR. CHAIRMAN, I MUST EMPHASIZE THE NEED TO HAVE SUFFICIENT FUNDS AVAILABLE AT ALL TIMES TO MEET JUROR EXPENSES. AS YOU KNOW, WE RAN INTO A MOST DIFFICULT SITUATION IN 1986 WHEN THE GRAMM-RUDMAN-HOLLINGS SEQUESTRATION WAS APPLIED TO THIS APPROPRIATION. AT THE REQUEST OF ITS COMMITTEE ON OPERATION OF THE JURY SYSTEM, THE JUDICIAL CONFERENCE HAS REQUESTED YOUR COMMITTEE BE ADVISED THAT IT IS STRONGLY OPPOSED TO ANY REDUCTIONS OF THIS REQUEST FOR PAY, ALLOWANCES, OR FUNDS FOR OPERATING THE JURY SYSTEM.

COURT SECURITY

IN FISCAL YEAR 1988, A TOTAL OF $46,300,000 IS REQUESTED FOR THE COURT SECURITY APPROPRIATION. THE INCREASE OVER 1987 AMOUNTS TO $10,300,000. BY THE CLOSE OF 1987, WE WILL HAVE 1,114 COURT SECURITY OFFICERS ON DUTY. THE COURT SECURITY COMMITTEES REQUESTED A TOTAL OF 1,354 COURT SECURITY OFFICERS TO IMPLEMENT THEIR CURRENT SECURITY PLANS, OR AN ADDITIONAL 240 OFFICERS ABOVE THE NUMBER AUTHORIZED IN FISCAL YEAR 1987. THESE ADDITIONAL SECURITY OFFICER POSITIONS WILL BE PHASED IN DURING FISCAL YEAR 1988 TO: (A) PROVIDE COVERAGE TO DISTRICTS THAT ARE CURRENTLY WITHOUT COURT SECURITY OFFICERS AND (B) ENHANCE THE LEVEL OF SAFETY OF FEDERAL JUDGES AND MAGISTRATES, EMPLOYEES, JURORS, WITNESSES, SPECTATORS, AND OTHER TRIAL PARTICIPANTS IN DISTRICTS THAT ARE STAFFED WITH LESS THAN THE MINIMUM NUMBER OF COURT SECURITY OFFICERS DETERMINED TO BE NEEDED BY DISTRICT COURT SECURITY COMMITTEES.

CONCLUSION

IN CONCLUSION MR. CHAIRMAN, WE RECOGNIZE THAT THIS COMMITTEE

CAN NEITHER REDUCE THE RANGE OF JURISDICTION CONFERRED ON UNITED STATES COURTS NOR BAR THE ENACTMENT OF LEGISLATION ADDING TO THAT JURISDICTION. WE MUST THEREFORE ASK YOU TO BUDGET FOR AN EXPANDING SYSTEM IN A TIME OF DEFICIT REDUCTION. WE APPRECIATE THAT THIS IS NOT AN EASY OR A POPULAR TASK, BUT AS I AM SURE YOU HAVE HEARD BEFORE: "WHAT GOOD DOES IT DO TO CATCH PEOPLE IF YOU CANNOT TRY THEIR CASES." THIS THEME IS APPLICABLE TO THE ENTIRE RANGE OF JUDICIAL ACTIVITIES. WE CAN ONLY ASSURE YOU THAT, CONSISTENT WITH THE NEED TO KEEP FEDERAL EXPENDITURES TO A MINIMUM, OUR BUDGET ESTIMATES FOR FISCAL YEAR 1988 PROVIDE ONLY FOR INCREASES DIRECTLY RELATED TO GROWTH IN WORKLOAD AND NEW LEGISLATION. ON BEHALF OF THE BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE, WE THANK THE COMMITTEE FOR ITS CONSIDERATE RESPONSES IN THE PAST. WE LOOK FORWARD TO WORKING WITH YOU ON OUR FISCAL NEEDS FOR FISCAL YEAR 1988 AND PLEDGE A PROMPT AND CANDID RESPONSE TO ANY REQUEST FOR ADDITIONAL INFORMATION.

Attachment 1

COMPARATIVE WORKLOAD DATA
FISCAL YEARS 1980 AND 1986

	F.Y. 1980	F.Y. 1986	% Change
COURTS OF APPEALS:			
Filings	23,204	34,605	+ 49
Terminations	21,943	33,821	+ 54
Pending, End of Year	21,037	25,692	+ 22
DISTRICT COURTS:			
Civil Cases			
Filed	171,346	246,733	+ 44
Terminated	164,359	258,382	+ 57
Pending, End of Year	190,670	245,768	+ 29
Criminal Cases			
Filed	29,387	42,343	+ 44
Terminated	28,606	39,470	+ 38
Pending, End of Year	14,771	25,262	+ 71
Totals			
Filed	200,733	289,076	+ 44
Terminated	192,965	297,852	+ 54
Pending, End of Year	205,441	271,030	+ 32
BANKRUPTCY PETITIONS:			
Filed	299,971	507,557	+ 69
Terminated	189,080	378,520	+100
Pending, End of Year	387,377	753,212	+ 94
MAGISTRATES:			
Criminal Trial Jurisdiction Cases	90,402*	91,570*	+ 1
Civil Trial Jurisdiction Cases	597*	4,931*	+726
Preliminary Felony Proceedings	87,031*	129,526*	+ 49
Other Criminal and Civil Matters	104,414*	219,548*	+110
PROBATION:			
Persons Received for Supervision	30,870	38,376	+ 24
Persons Under Supervision, End of Year	63,361	70,864	+ 12
Presentence Investigations	23,702	36,161	+ 53
Other Investigations	89,277	103,780	+ 16
Petitions for Naturalization	150,646*	293,252*	+ 95
Aliens Naturalized	133,721*	252,679*	+ 89

*Data for the year ended June 30.

COURT SECURITY

Senator Bumpers. That is fine with me.

Judge, the other day we had a hearing here with the Federal Marshals; Stanley Morris was here, and we got into a discussion on when courtroom security was needed and when it wasn't. Apparently, that may have been at odds with the Judiciary in various places around the country over the adequacy of courtroom security and who should have the authority to determine when a marshal or deputy marshal will be present during the courtroom proceedings. Who makes that decision?

Judge Clark. The District Judge does, Senator, as far as the absolute legalism of the courtroom situation is concerned. Please bear in mind that overall court security involves a bifurcated system.

Several years ago, the General Services Administration was providing what is known as perimeter security in buildings where courts were located, similar to the perimeter security here at the Capitol. This is the guard that you would see at the entrance to the building who has a magnetometer or who has some other device for searching people that routinely come in and out of the building.

When GSA told us that they were going to pull off that perimeter security, quite a number of judges throughout the country were concerned, and we came at that time to the Appropriations Committees because the Justice Department was having so much trouble with OMB in getting authority to fund a replacement security program.

We asked the Appropriations Committees to consider funding a program for us, within the Judiciary budget, that we would turn over to the Marshals Service to administer for us so we wouldn't have to set up a security division in the administrative office.

The Marshals Service and the Appropriations Committees have worked with us to establish that program. We have some money in the present budget for the court security program. Those officers are all contract employees, and they are called court security officers [CSO's]. Those people do not go into the courtroom. Their presence, their number and their duties are regulated by a court security committee in every one of the judicial districts in the United States.

That security committee is composed of the Chief Judge of the District; the U. S. Marshal, the Clerk; and then there are some other officials from GSA and the U.S. Attorney's office to make five on that security committee. They recommend how many people will be stationed at each perimeter spot to do strictly perimeter security. That is the way those people get installed.

There is a second program funded from the U.S. Marshals budget. Those are the officers who customarily have gone into the courtroom to safeguard the proceedings and protect the judges in the courtroom.

In almost every district in the United States, the use of those deputy U.S. Marshals in courtrooms responsible to judges is regulated by an agreement that was confected between the Attorney General of the United States and then Chief Justice Burger of the Supreme Court of the United States. It is called the Attorney General's Task Force Report on Court Security.

In some districts, the supervening authority of the individual United States District Judge under 28 USC 569 has been exercised by an individual United States District Judge. He will say, "I don't care what that task force report shows; I want a U.S. Marshal in my courtroom every day at every trial, whether or not I am trying a contract lawsuit between Joe and Mo or whether I am trying a criminal case that involves the Mafia."

The task force report doesn't require a marshal to be present in the courtroom when the judge is not engaged in a high security risk trial. It does provide that he gets a marshal in every situation where there could be danger. That is a long answer to a short question.

Senator BUMPERS. It is an ad hoc decision, isn't it?

Judge CLARK. It is an ad hoc decision, and by law, it is vested in that District Judge. If he chooses to override the recommendations of the Conference to abide by that task force report level, he can require a marshal to be there. The Marshals Service definitively said, "We want to change that statute." This provoked a controversy between the Marshals Service and some judges who were not satisfied with the levels of the task force report.

This controversy was resolved last year when the Marshals Service simply backed away from their request for amendment of the statute.

Senator BUMPERS. I don't want to prolong this, but it is a fairly important issue, and you only have to read the paper occasionally to find out how important it is. I know when I practiced law in the State courts, I got to the point where I avoided domestic relations cases that were hotly contested, stolen dog cases and fenceline disputes. Those are the best ones in the world——

[Laughter.]

Senator BUMPERS [continuing]. To get yourself killed in.

I always felt, and you know, a lot of times—I never did it—but a lot of times, if I had a divorce case and I had a client that I thought maybe had some psychopathic tendencies or something. A lot of times, I felt like calling the judge to say, "Make sure a sheriff's deputy is in the courtroom today, because I don't even trust my own client."

I never would do that because you can get caught doing that. You call a judge to tell him your own client is psychopathic and you will go to court.

But I got caught up, particularly early in my career, in cases like that. I think courtroom security is extremely important, and I am glad to know that the judge has the right to override the task force. Sometimes the judge himself won't realize the volatility of the case, but at least in the Federal Courts they are not trying divorce cases, and that is where the most violence occurs in the courtrooms in this country.

DEFENDER SERVICES

In your opening statement, you ascribe some of the increase in costs of the Defender Services to the increasingly complex nature of the case, such as fraud, embezzlement and high technology.

My question is: In most of those cases, why should we continue providing defender services?

Judge CLARK. Let me let Judge O'Brien, who has direct involvement in that area, answer this question.

Judge O'BRIEN. The situation is that the judges are really careful about this; they don't appoint any one frivolously. You have a fellow who embezzled $300,000. By the time he comes to court, he probably hasn't got a quarter left.

We put him on the stand; we swear him in. We ask, "Have you got any cars? Have you got any bank accounts? Have you got anything else?" And tell him he is under perjury threat and he better be very careful. If he has any money, we don't appoint him a lawyer. If he shows that he is busted, we do.

I don't know if that answers your question entirely.

Senator BUMPERS. Warren, what was the increase requested for Defender Services? Judge O'Brien, do you know that figure?

Judge O'BRIEN. Not right off, I don't. You mean in our request?

Senator BUMPERS. Yes. The staff says that in the budget, there is an increase of almost $8 million. That's a big request; that is a big increase for that item. That is the reason I was asking the question.

Judge CLARK. The reason I would ascribe to it is the increase in criminal cases, because in most criminal cases, we do not have retained lawyers.

Mr. MECHAM. It is also anticipated, Judge Clark, that this new drug program is going to increase the caseload for public defenders.

Judge CLARK. That is true, and we are now feeling the full impact of the increase in rates. The monies that we are paying out now are, in large part, based upon reductions under Gramm-Rudman sequestrations. We docked lawyers 10 percent in a great many cases across the country, and the reduction that judges were making in those fees have now been restored. That is part of it. A lot of things contribute to that increase.

Senator BUMPERS. I see. That would make sense.

Judge CLARK. Senator, could I supplement that? In one way, we have said in our justifications that we do expect some leveling in the years 1987 and 1988. So we don't anticipate as large an increase in 1988. The Comprehensive Crime Control Act has also added to that burden.

CLOSING COURTHOUSES

Senator BUMPERS. Let me ask Mr. Mecham this question. Judge Clark has said that the increased caseload in Federal courts dictates more judges and a lot of this. Has the Administrative Office dropped its plans to close some of the courthouses in different States?

Mr. MECHAM. The Administrative Office doesn't have plans to close.

Senator BUMPERS. Close any courthouses? I was going to say, we are building four new courtrooms in my state.

Mr. MECHAM. The Judicial Conference of the United States, on the other hand, is mandated, by law, to recommend closure where it is felt that a courtroom is not required. There was one in Rock Hill, SC, as I remember. That is the only one I know of in the country that currently is involved.

That is a Judicial Conference matter rather than an Administrative Office question.

Senator BUMPERS. Last year your proposal would close about half the Federal Court locations in Arkansas.

Mr. MECHAM. That was not a proposal, as such. You remember, Judge Clark, this came out of Gramm-Rudman-Hollings.

Senator BUMPERS. Was that in reaction to that request; was that it?

Judge CLARK. To the Gramm-Rudman reductions?

Senator BUMPERS. Yes.

Judge CLARK. Yes, sir.

Senator BUMPERS. I mean the proposal to close those court locations in Arkansas. We are not talking about courthouses; we are talking about where the court sits on occasion in a Federal Court building.

Mr. MECHAM. That was in response to Gramm-Rudman-Hollings, and the studies were made by the Judicial Conference, Bankruptcy Committee, and I have forgotten which other one, and they came up with a statistical analysis based on court use and suggested these were some of the courts that should be considered for closure.

After further study, I think they dropped virtually every one of them, Senator.

Senator BUMPERS. Good.

I know my mail dropped off, so I assumed something happened.

Mr. MECHAM. I happened to be in Arkansas for the Eighth Circuit Conference then. We heard from a good many people.

Senator BUMPERS. Not nearly as many as I heard from.

Judge CLARK. Senator, I might say that the U.S. District Court for the Northern District of Mississippi recommended closing the court facilities in Clarksdale, MS, which turned out to be Chairman Whitten's district.

Senator BUMPERS. That was the end of that story, wasn't it?

Judge CLARK. We decided not to close it.

JUDICIAL IMPACT STATEMENTS

Senator BUMPERS. On page 3, Judge Clark, this question is about judicial impact statements. That is an interesting proposal. I am curious as to how you would suggest we carry out a mechanism to do that.

I admit that sometimes we do things that obviously are going to increase your caseload dramatically. Nobody ever pays much attention to that. We have to take that into consideration in this committee.

Judge CLARK. Perhaps the most dramatic example of that is this childhood vaccine injury legislation that was created last year wholly within the Agriculture Committee as far as the study of legislation was concerned. It provided for the appointment of a special master in every case.

We anticipate, based upon an estimate of over 9,000 claims that we will get more than 9,000 lawsuits in that one piece of legislation that nobody on the Judiciary Committee gave any thought to at all.

Senator BUMPERS. Where did you get the 9,000 figure?

Judge CLARK. The Centers for Disease Control gave us this estimate.

Senator BUMPERS. They are the ultimate authority on this issue, and I'm sure the estimate is accurate.

Judge CLARK. They are the ones that estimated 9,000 claims. Our people had estimated that those 9,000 claims will actually result in more than 9,000 lawsuits.

Senator BUMPERS. Does the vaccine compensation legislation require appointment of a master in every case?

Judge CLARK. It requires the appointment of a special master in every case.

Senator BUMPERS. If a claim is filed.

Judge CLARK. That is correct.

Senator BUMPERS. I understand that the first year the vaccine injury compensation is operational we'll have to handle a backlog of cases of those injured in previous years. That is really an interesting illustration you give.

Judge CLARK. If I could get back to the main point of your question, which was judicial impact statements, we think that the judicial impact statement should have been filed in connection with that legislation. It would be helpful to the Judiciary Committee.

Senator BUMPERS. Have we ever done that? Has Congress ever filed a judicial impact statement?

Judge CLARK. No, sir. But there is proposed legislation in the House of Representatives. If I may, I would like to offer as an exhibit to my testimony a proposed bill by Congressman Shaw. It has not yet been introduced. But as soon as other sponsors are permitted to join, we anticipate it will. It tells you what the House proposes to do.

Senator BUMPERS. It will be printed in the record at this point.

[The information follows:]

100TH CONGRESS
1ST SESSION

H. RES. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. SHAW (for himself,) submitted the following resolution; which was referred to the Committee on ____________________

RESOLUTION

To amend the Rules of the House of Representatives to require judicial impact statements to be included in committee reports whenever any committee reports legislation which could reasonably be expected to generate a significant number of court filings.

Resolved,

SECTION 1. JUDICIAL IMPACT STATEMENTS.

(a) Clause 2(l) of Rule XI of the Rules of the House of Representatives is amended by inserting at the end thereof the following:

``(8)(A) Each committee chairman shall notify, in writing, the chairman of the Committee on the Judiciary before consideration by such committee or any subcommittee thereof of any bill or joint resolution of a public character which could reasonably be expected to generate a significant number of court filings (whether civil or criminal) and include with the notification a copy of the text of the bill or resolution. Any such chairman shall also transmit to the chairman of the Committee on the Judiciary the text of any amendments adopted by the committee or any subcommittee thereof which would affect the number of court filings.

``(B) The chairman of the Committee on the Judiciary shall, upon the receipt of any such notification have prepared a statement estimating the number of anticipated court cases and the costs which would be incurred by the judicial branch in carrying out or complying with the legislation and submit the statement to the committee of jurisdiction in time to allow the committee to consider the statement during consideration of such legislation. The statement shall describe the adequacy of existing and anticipated judicial resources to handle any increase in cases as a result of such legislation, after taking into account any comments or testimony received from the United States Judicial Conference or the Department of Justice.

``(C) Each report of a committee (including the Committee on the Judiciary) on each bill or joint resolution of a public character reported by such committee which could reasonably be expected to generate a significant number of court filings (whether civil or criminal) shall contain an estimate of the number of anticipated cases and costs which would be incurred by the judicial branch in carrying out or complying with such legislation, separately stated and clearly identified, if (with respect to committees other than the Committee on the Judiciary) the statement is timely submitted to the committee by the chairman of the Committee on the Judiciary pursuant to subdivision (B) before the filing of the report.

``(D) It shall not be in order to consider any bill or joint resolution in the House if the report of the committee which reported that bill or joint resolution does not comply with subdivision (C).''.

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall apply with respect to bills and joint resolutions first called up for consideration by a committee or subcommittee thereof on or after the thirtieth day beginning after the date of adoption of this resolution.

Judge CLARK. You asked me what the Senate would propose to do. I might give you some suggestions. I hope it is not presumptuous. First of all, I would have you identify every bill that has any provision for vesting jurisdiction in the United States Courts. We would hope that the Senate would pass a rule similar to the House's rule that would require any such bill to be presented to the Judiciary Committee for evaluation. It would amount to an automatic reference of that legislation.

The other alternative would be to require a cost estimate to accompany that bill and then have someone that would be competent to prepare a cost estimate so that at least you would know on your committee what the dollar effect of this legislation might be. Those are the kinds of proposals we recommend. We would be glad to develop a specific proposal for you.

Senator BUMPERS. I think it would be good for you to do that. I wouldn't suggest that you assemble any big task force to do a long study or anything, but if you could give us kind of a summary on how you would suggest that be done, I think it has merit.

Judge CLARK. Thank you. Principally, it is going to involve a look at the bill by the Judiciary Committee, Senator.

ELECTRONIC SOUND RECORDING

Senator BUMPERS. Yes. Last year we had lengthy discussion on the use of electronic sound recording systems and videotape technology in the courtroom. Has any progress been made on that since last year?

Judge CLARK. Yes, I would think so, Senator. Judge O'Brien is certainly in the best position as a trial judge to give you an answer to that, and I would like him to help us with that, if you would.

Judge O'BRIEN. Before I start on that, when we talked yesterday, we were briefed by some of the AO fellows. They tell us they are going around the country, particularly in Kentucky and places like that, where this advanced technology is in use. They are staying abreast of everything that is happening, and last year before this committee, they had said they thought that within 10 years they would be at a very high level of automation in the courtroom.

I would think it is closer now, and I would hope that it would go that way. As far as court reporters, let me say to you that I am the Chief Judge and I meet with the Chief Judges three or four times a year, and Tom Eisele is always there, and Scott Wright from Kansas City.

Scott Wright has automation and Tom has court reporters. They are good friends. Scott Wright will sit over there and say, "Tom, you are a dummy. You ought to have this automation," and Tom will say, "I will be 105 before I ever get that."

Nobody puts any pressure on Tom, and they have quite a discussion back and forth. It is about like the Marshals problem that we talked about a little bit ago. The judge in the courtroom has the final say. But to answer your question, I don't think anybody is going to be forced to drop their court reporters.

On the other hand, I think that the AO's office is keeping up with all the latest technology in case people want it and in case the Congress sees that that might be appropriate in some respects.

Judge CLARK. Senator, could I supplement that with sort of an overview policy? I think that I can speak for the Judicial Conference on it, because we have discussed it extensively. Nobody is going to displace any presently employed court reporter in this system, but we do intend to, as Judge O'Brien says, keep up with the latest technology and make it available to judges, describe what it will do and let them decide whether they want to do it.

Senator BUMPERS. Judge, I think that is the way to do it. I tell you, the political impact on this was pretty intense 3 or 4 years ago when we first started discussing this. I think everybody is going to go to the more advanced electronic reporting system.

Frankly, I am not sure that it is not going to be more accurate. I don't know what the studies show. I know that we are all resistant to change; we like to have that court reporter sitting there talking into the machine. I don't know. That gives us some sense of security, I guess, but the truth of the matter is that if you had a couple of backup machines there you are likely to get an absolutely accurate account of what transpires.

But the sound system, obviously, has to be very good, and some of these court reporters who talk to me about it have some pretty good arguments for their case. But I take it that most of the judges who have tried it and use it like it very much.

Judge O'BRIEN. That is what I have found, yes.

Judge CLARK. The stories you get from the court reporters' association are horror stories.

Senator BUMPERS. They are the horror stories.

Judge O'BRIEN. They describe one or two times when things have not functioned correctly, and this will happen in any system. There are some court reporters who don't do too well.

Senator BUMPERS. That is right.

Judge CLARK. The only thing I would say to you is we don't intend to displace anybody. Their claims to the contrary are unfounded. We do intend to keep up with the latest technology and make it available to the courts wherever it is wanted.

Senator BUMPERS. When you think of all the losses that have gone up with alleged faulty transcripts and so on. Do you remember the *Carol*

Chessman case, the famous murder case. What was the book he wrote? He finally was executed. Here was his whole claim; most of his appeals were based on faulty transcripts.

TRAVEL INCREASES

One final question, and then I am going to submit the rest of these questions for the record. One final question. You have asked for $40.8 million for travel. That is a 39 percent increase since 1986. In other words, that is a 39 percent increase from 1986 to 1988.

What is your justification for that?

That is a whopping big increase.

Judge CLARK. There are two justifications that come to my mind readily, and perhaps Mr. Mecham can supplement. One is the increase in per diem rates. The other is the increase in people, the number of people who accomplish travel in pursuit of their jobs.

Mr. MECHAM. As you know, Senator, there was a substantial liberalization in per diem under legislation passed by Congress about a year, a year and a half ago. That went into effect for the judiciary last August 1st, and it has occasioned a substantial increase in the amount spent for travel.

Judge CLARK. One other thing that I didn't think of until Mr. Heising reminded me, in 1986, Gramm-Rudman was in effect.

Senator BUMPERS. So you have the same problem.

Judge CLARK. We voluntarily put a cap on travel that year, because it was controllable; it was one of the few controllable things that we had in our budget.

SUBMITTED QUESTIONS

Senator BUMPERS. Yes. Gentlemen, that is about it. We have some additional questions on behalf of the chairman and Senator Domenici we will submit to you for the record. We would like to get a response at the earliest possible time. Thank you very much for coming.

Judge CLARK. Thank you very much, Senator. I appreciate it.

[The following questions were not asked at the hearing, but were submitted to the Adminstrative Office for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

TRAVEL

We are aware that your travel regulations provide that certain of your judges may claim actual expenses of subsistence (not per diem) not to exceed a maximum daily allowance of $150.00. For the record, I would appreciate the following information:

Question. On what basis do you reimburse the clerks or other members of the court accompanying Judges who receive up to the $150.00 maximum daily expense allowance?

Answer. Only Article III Judges may claim actual expenses of subsistence up to $150.00 per day at any location. All other Judiciary personnel are limited to claiming actual expenses of subsistence, when authorized, up to 150% of the per diem rate for the applicable locality, just as other federal employees are.

Question. Does the Judiciary provide "contract quarters" at those locations where there is continued visitation by Judges and/or staff?

Answer. On a limited, case-by-case basis the Judiciary has provided "contract quarters" for officers and employees traveling on official business. However, there is no on-going contract or contracts to provide "contract quarters on a routine, continuous basis.

Question. Provide a schedule that identifies Judges who received reimbursement under your $150.00 criteria for each trip taken in excess of a consecutive ten day period during the first six months of fiscal year 1987 (1 October 1986 to 31 March 1987). Please reflect the names of everyone on the trip who was reimbursed in excess of the standard per diem allowances, the period, the location and the amount of reimbursement received by the travelers.

Answer. In the limited time available we have been able to review only vouchers processed for payment during October 1986. Our review showed that no judges received reimbursement under our $150.00 criteria for travel in excess of ten consecutive days. We will provide the requested information for the five-month period, November 1986 through March 1987, as soon as we are able to develop the information.

Question. Provide copies of those pages of your travel regulations that authorize and explain the procedures for granting the increased allowances.

Answer. Pages 15 through 19 of our Judges' travel regulations follow. Paragraph D.1.a.(3), page 16, sets forth the increased daily subsistence allowance of up to $150.00 per day.

Section D. Subsistence Expenses.

1. Actual Expenses or Per Diem. A judge may claim actual expenses of subsistence or a per diem in lieu of actual expenses of subsistence as follows:

   a. Actual Expenses of Subsistence.

      (1) If a judge elects to claim reimbursement for subsistence expenses on an actual expenses of subsistence basis, each subsistence expense must be itemized for each calendar day of official travel. (See Exhibit F.) The following expenses are considered items of subsistence and should be listed separately:

         (a) Meals and tips.

         (b) Lodging or daytime room rental (single occupancy rate if accompanied by spouse).

         (c) Tips and gratuities at hotels and transportation terminals for handling personal luggage.

         (d) Laundry, cleaning and pressing.

         (e) Transportation to obtain meals.

      (2) For travel within the conterminous United States, claims shall be for subsistence expenses actually incurred, not to exceed a maximum daily expense allowance of 150% of the authorized per diem rate for the locality where temporary duty is performed. Exhibit J contains the applicable per diem rates for localities within the conterminous United States.

For travel outside the conterminous United States, the maximum daily subsistence allowance shall not exceed 150% of the authorized per diem allowance for the area or the authorized per diem allowance plus $50, whichever is greater.

(3) As an alternative to the expense allowance levels established in subparagraph (2), judges may claim actual expenses of subsistence not to exceed a maximum daily expense allowance of $150. This subparagraph (3) does not apply to United States Bankruptcy Judges or Magistrates due to statutory limitations.

(4) Judges while attending court or transacting business under an assignment which exceeds in duration a continuous period of thirty calendar days away from their official duty station, both within and without the conterminous United States, as authorized by Chapter 13, Title 28, United States Code, may claim actual expenses of subsistence for such expenses actually incurred, not to exceed a maximum daily expense allowance of $150, or 150% of the authorized per diem rate for the locality, whichever is greater. In those instances where special circumstances warrant, the Director of the Administrative Office may raise these limits upon written request explaining the need for the increase. This subparagraph (4) does not apply to United States Bankruptcy Judges or Magistrates due to statutory limitations.

(5) A judge who is invited to attend a Circuit Judicial Conference which is being held in the city where that judge's official station is located may be reimbursed for meals if such meals are incidental to the meeting, provided that the attendance of the judge at the meals is necessary to full participation in the business of the conference and that the judge is not free to partake meals elsewhere without being absent and missing essential formal discussions, lectures or speeches concerning the business of the conference. Reference to this paragraph D.1.a.(5) on any voucher claiming

such meals will be considered sufficient documentation that the judge has met the criteria for payment of this item of subsistence. Under no other circumstances may judges claim subsistence at their official station.

(6) Actual expenses may be claimed for any period away from the judge's official station, including travel that does not involve absence overnight. (See Exhibit G.) When electing at the start of a trip to claim actual expenses, this practice should be continued for the entire period at the same temporary duty station. When two or more temporary duty stations are involved in the same trip, a judge may elect to claim reimbursement on either a per diem or actual expenses of subsistence basis for travel to each temporary duty station. (See Exhibit H.)

(7) When a judge performs official duty at a place other than his official station or place of residence from which he commutes to his official station, and rents or maintains an abode at the temporary duty location, claims for lodging expenses are to be prorated based on the average daily cost. Monthly rental or mortgage expenses (excluding principal payments) plus the cost of utilities (including basic monthly telephone charge) divided by the number of days in the month equals the amount to be claimed for the lodging portion of subsistence each day while in an official travel status. Such claims for lodging, however, must be limited to the lesser of (a) the results of the cited proration, or (b) the daily cost of lodging that would otherwise have been incurred for a single room at an acceptable hotel or motel at the temporary duty station.

(8) Even though a particular meal is furnished in conjunction with common carrier transportation and included in the fare, the purchase of a like meal is reimbursable, so long as the maximum daily actual subsistence allowance is not exceeded.

b. Per Diem Allowance.

(1) A per diem allowance may be claimed only when the travel involves an overnight absence from the judge's official station. The per diem allowance need not be prorated and is in lieu of claiming subsistence on an actual expense basis. (See subparagraph 1.a.(6) of this Section.)

(2) The maximum sum authorized is the per diem rate established for the locality where temporary duty is performed for each day lodging is required. The per diem rates are set forth in Exhibit J. A $33 per diem rate has been established for the day of return to the judge's official station or residence since a lodging expense is not involved. (See Exhibit I.)

(3) The per diem rates at localities outside the conterminous United States change frequently. Rates in effect at the time of travel may be obtained from the Circuit Executive or the Clerk of Court for the particular locality involved, or the Audit Branch, AO.

2. Illness or Injury. When a judge becomes incapacitated for duty due to illness or injury, not caused by his own misconduct, while at a temporary duty station, he may claim per diem or actual expenses of subsistence for a period of not more than 14 calendar days. When the period of illness or injury exceeds 14 calendar days, authorization for an extension of the subsistence allowance should be requested from the Director of the AO. No evidence of the illness or injury need be submitted with the reimbursement voucher other than a short statement or explanation that the claim was due to illness or injury. In emergency situations, a judge may be reimbursed the cost of return transportation to his official station or residence by a mode of travel that he would not have ordinarily utilized, such as an ambulance. If, while in travel status, the judge received hospitalization (or is reimbursed for hospital expenses) under any Federal statute other than 5 USC §8901-8913, the per diem allowance or actual expenses of subsistence shall not be paid for the period involved or, if paid, shall be reimbursed by the judge.

TRAVEL ADVANCES

We have to assume that with so many people traveling for the Judiciary system, you have made provisions for providing up front advances to offset out of pocket expenses for the travelers.

Question. Approximately how much do you have outstanding in travel advances?

Answer. There are approximately 600 judicial employees with outstanding travel advances totalling $334,000.

Question: Do your travelers use the GSA sponsored government credit cards to charge meals, lodging, rental cars, etc.?

Answer. We have implemented the Government Diners Club Credit Card program with the Judiciary on a voluntary basis. As of April 30, 1987, 338 Judiciary officers and employees have been issued these credit cards.

Question. How are you able to keep up with the high volume of travel voucher claims against a $40 million travel program?

Answer. Each judge and other court personnel are reimbursed for their travel expenses by a local court disbursing officer. The almost 100 Judiciary disbursing offices allow us to pay all of our obligations, not just travel vouchers, in a timely manner. Travel vouchers paid in the courts are subject to audit after payment by the Administrative Office.

Question: Are you satisfied that your procedures are adequate for recovering excess travel funds that may be owed the Government?

Answer. Except for employees who perform travel on a continuing month-in and month-out basis, all travel advances must be liquidated at the time the travel voucher is submitted upon completion of the travel assignment. All travel vouchers are subject to a review before payment and an audit after payment. When monetary errors are noted during the post-audit phase, the traveler is advised and refunds are requested for overpayments. Likewise, if an underpayment has occurred the traveler may file a supplemental claim. All requests for refunds are pursued until the refunds are received or are otherwise satisfactorily resolved.

COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES

Question. Starting on October 1, 1986, the civil case filing fee was doubled from $60 to $120.

-- Have the district courts observed any substantial decline in the number of civil cases filed over the past six months which could be attributable to the increase in filing fees?

Answer. The district courts have experienced a decline in the number of civil cases filed since October 1, 1986. However, filings were on the decline prior to that time as well, so the reduction was probably not a result of the increased filing fee. Over the last three months, civil filings are again on the rise.

Question. -- Has the Judiciary undertaken any studies on the costs associated with its services to determine what is the appropriate fee to charge those persons who file federal civil lawsuits? If so, what did the study document?

Answer. No studies have been conducted to determine what is the appropriate fee to charge those persons who file federal civil lawsuits. At its March 1986 session, however, the Judicial Conference of the United States "request(ed) the appropriate committees of the Judicial Conference to study the possibility of increasing the entire range of miscellaneous fees prescribed by the Judicial Conference" pursuant to 28 USC 1913, 1914, 1926 and 1930 and at its March 1987 meeting approved increases in certain fees for services performed by clerks of court. Filing fees in civil lawsuits were not affected by the action taken by the Judicial Conference because they are set by Congress pursuant to sections 1914 and 1930.

You have included $2 million in the budget for the extra compensable day in FY 1988, that is, 262 work days compared to 261 in 1987. In computing the biweekly payroll for Judicial Schedule employees, you use 260 work days or 2,080 hours even though there are usually one or two additional work days in a calendar year. However, for Administrative Office employees, who are under the General Schedule, you are using 2,087 as the hourly divisor to compute biweekly pay, which is the biweekly pay method used for all General Schedule employees and congressional staff.

Question. -- Has the Judiciary considered changing the hourly divisor from 2,080 to 2,087 for Judicial Schedule employees? (GAO estimates that this change would save the Judiciary about $203,000 annually by reducing the average court employee salary $4 biweekly or $104 annually. For most Judicial Schedule employees, this small reduction would be offset by the recent changes in the tax laws.)

Answer. Yes. After analysis of the 2,087 divisor requirement, it was determined that no salary of any judicial branch employee would be reduced by any amount unless the reduction were mandatory. Consequently, the 2,087 divisor is utilized only for the salaries of incumbents of positions in or statutorily linked to the General Schedule, e.g., excepted service salaries at the Federal Judicial Center and JSP salaries are based on the 2,080 divisor.

Use of the 2,087 divisor where not mandatory would require Judicial Conference approval. The question has not been presented to any of the Conference committees for consideration.

You are requesting about a $23.5 million (13 percent) increase in space rental charges. You state that the $205.7 million needed to pay GSA for the 13.2 million square feet of space occupied by the courts was based on a GSA projected billing document received in May 1986. According to GAO's report on internal controls dated April 1986, two of the three district courts GAO audited were claiming that GSA was billing the Judiciary for more space than the two courts occupied -- an overcharge of about $387,000 annually at the two courts.

Question. -- How many other courts disagree with GSA on the amount of space occupied and what is the total dollar amount in dispute?

Answer. No other courts have notified the AO of discrepancies in their GSA bills. This, however, does not mean that there are no other discrepancies.

Question. -- What is the Administrative Office doing to resolve the space discrepancies with GSA?

Answer. The Administrative Office is in the process of reviewing GSA's computerized space tracking system to verify the current charges to the Judiciary. We plan to complete this review by the end of this calendar year. We have also begun to establish a system to monitor better the inventory of space used by the Judiciary. This will, in turn, allow us to keep current space data needed for estimating space rental charges.

You estimate that about $1.2 million is needed to cover the increased cost of replacement furniture and equipment. GAO's internal controls report found that the Administrative Office and the courts were not maintaining proper inventory controls over furniture, furnishings, and equipment. As GAO points out, these items could be lost, disposed of improperly, stolen without any means of detection, or purchased needlessly without adequate property management records.

Question. -- Have the courts taken a recent physical inventory of furniture and equipment, and how did the inventory compare to the property management records kept by the Administrative Office.

Answer. The GAO report reflects the most current inventory (1984). In accordance with the AO's Furniture Guidelines, furniture inventories are maintained by the Courts and verified by physical count every 3 years. The next scheduled inventory will be December 31, 1987. Since the furniture inventories are not maintained by the Administrative Office, there is no reconciliation process. Conversely, the equipment inventories are maintained by the Services and Contracts Branch, Administrative Services Division of the Administrative Office. At this time inventories are reconciled with the court only upon request or when an official leaves the Judiciary.

Question. -- How much property have the courts identified as excess? How is this property managed?

Answer. Data on excess furniture is not available to the Administrative Office. Each court maintains its own procurement, accountability, and disposition records. Office equipment is managed by the Administrative Office and very little is available as excess. Excess furniture is managed by the courts. The Furniture Guidelines authorize and direct the courts to transfer excess furniture to other courts or Federal agencies or to use GSA processes to dispose of furniture that is excess to known needs. Equipment is managed by the Administrative Office and all excess should be reported to the Services and Contracts Branch of the Administrative Services Division. Since most equipment items are used as trade in against the purchase of new replacements there is very little available as excess. Equipment of any value that is available for transfer is listed in the Clerks

Information and Management Bulletin. If no court expresses an interest, the items are reported to GSA as excess. Most excess equipment is of little or no value. As such it is classified as scrap and the court is directed to sell, donate, or discard as appropriate.

Question. -- What actions has the Administrative Office taken to implement GAO's recommendations on inventory control practices?

Answer. The courts are required to conduct a physical inventory of furniture by December 31, 1987, and report to the Administrative Office by May 1, 1988, the dollar value of the inventory. To insure compliance with this requirement the Director may withold the annual furniture allocation from any court that fails to report its holdings. With regard to equipment, the Services and Contracts Branch is developing a comprehensive inventory on an IBM System 36 minicomputer. This automated inventory will permit scheduled periodic reconciliations. This system will be fully operational in 1988.

You included an additional requirement for 10 deputy clerk positions for work associated with anticipated decentralization of the payment of Criminal Justice Act vouchers and the contracting for court reporters from the Administrative Office to district courts.

Question. -- What adjustments were made to the Administrative Office's permanent positions to reflect the reduced workload associated with the decentralization?

Answer. Because the decentralization effort will only be instituted on a pilot basis in fiscal year 1988, the number of authorized positions for the Administrative Office was not reduced. The functions performed centrally will have to continue to be performed until decentralization can be fully implemented.

In your description of staffing needs for District Clerk's offices, you list "additive factors" in arriving at deputy clerk positions justified by the work measurement formula. Some of these factors include processing of central violation bureau tickets, naturalization petitions, etc. GAO's internal control report described how changes to the operation of central violation units through the use of lockboxes would improve controls and eliminate workload at the units.

Question. -- How many positions are currently available for central violation unit operations?

Answer. There are currently 49 positions dedicated to central violation unit operations.

Question. -- Has the Administrative Office done a feasibility study on the use of lockboxes to process petty offense payments? What did the study show and what would be the staff savings associated with such a change?

Answer. Yes, the U. S. Department of Treasury completed a study on the use of lockboxes to process the petty offense payments for central violations. The result of their study concluded that the use of lockboxes for the Central Violation Bureaus was not cost effective to the government. The cost of the current CVB system was compared to the cost of the most efficient lockbox system and resulted in an additional cost of $155,000.

Question. As the GAO report points out, there are eight central violation units nationwide.

-- With the increased automation efforts ongoing in the courts, could the units be centralized further to achieve greater economies of scale?

-- How many positions could be saved from further centralization?

Answer.

The Federal Judicial Center at the request of the Judicial Improvements Subcommittee of the Judicial Conference conducted a study to determine if further consolidation would achieve greater economies of scale. The study, which was submitted to the Subcommittee, concludes that for operational and security reasons there should be fewer than the current eight sites, but at least two sites. It was estimated that this consolidation would save between five and thirteen positions.

The GAO report also points out that improved collections from central violation units at less government cost could result if state assistance were obtained to help courts notify persons about outstanding traffic tickets as is currently done in California and Maryland.

Question. -- What actions has the Judiciary taken to obtain state assistance in helping the courts to notify individuals of outstanding traffic violations?

Answer. Since the Judiciary is not responsible for this function, we have requested that the Department of Justice work with the states on this issue.

Question. The President approved Public Law 99-554 (The Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986). While the Act created 52 new bankruptcy judgeships and a requirement for 179 additional support staff, it also shifted responsibility for trustees administration and supervision to the United States Trustees, an organization within the Department of Justice. Prior to this change, the Judiciary's 125 estate administrators provide trustee supervision for the majority of the Bankruptcy Courts.

-- What adjustments have been made in the number of estate administrator positions to reflect the shift in responsibility?

Answer. No adjustments have been made to date. Public Law 99-554 provided for a year transition period for the establishment of the United States Trustee program. (The Judiciary will remain responsible for estate administration until 1992 in six judicial districts.) Additionally, Section 302 of the legislation provides that the United States Trustee would not be responsible for pending cases until the earlier of three years after enactment or one year after the United States Trustee takes responsibility for a region. Because of these transition provisions, the Judiciary will retain responsibility for estate administration for a period of time.

Question. -- When will the support personnel positions for estate administrators be reduced and/or eliminated from your budget?

Answer. Upon completion of the transition period noted above, these positions will be eliminated from our budget.

Question. The Judiciary is in the second year of its 5-year plan to modernize and expand automated systems in the appeals, district, and bankruptcy courts. On page 5.38 of the budget justification, you deducted 111 bankruptcy clerk positions from the 4,168 positions justified by the work measurement formula. You state that this reduction was made because of BANS Automation and contracting out of bankruptcy notices.

-- For the other major automation projects (District Court Automation, Appellate Information Management Systems, and Office Automation), how many clerk positions do you expect to save in these courts over the next several years?

-- How many positions does the Administrative Office expect to save through court automation and phase out of the centralized automation systems (Courtran)?

Answer.

Before answering the question we would like to explain the evolutionary nature of the Five-Year Plan for Automation in the U. S. Courts. Since its initial release in 1984, the Five-Year Plan has been updated annually to address future automation plans for the next five years. By dropping the prior year and adding an additional year in each annual update, the plan always presents a moving five-year window of projected judicial automation activities.

We expect to see no direct savings in positions as a result of automation in the district or circuit courts, nor do we expect to reduce the size of the staff of the Administrative Office as a result of the phase out of Courtran. Automation will help the courts with better case management information and improved docketing and services. Any savings in personnel in the courts will be needed to offset the staffing required to operate the computers and support the automated system, and those in the Administrative Office will be used to provide centralized support for court automation activities. In both instances, we would be reducing our request for needed positions because of "cost-avoidance".

Question. --Because automation is now an important integral part of the courts' operations, what has the Administrative Office done to assess the adequacy of the courts' data processing controls to ensure that accurate and reliable caseload and financial information is being reported?

Answer. Each of the automated case management systems designed for court use includes a statistical package which generates the caseload reports to the Administrative Office. These packages include a number of processing edits which insure the accuracy and reliability of the caseload data. Since the statistics will be developed as a by-product of the case management system and automatically generated from the system, they should be even more accurate than the manual reporting process.

To further assure the accuracy and reliability of the statistics, the Administrative Office has established a routine review of the caseload reporting practices of all courts of appeals (automated and manual) and will be developing a similar review procedure as automated systems begin to generate caseload statistics for district and bankruptcy courts. Data are also reviewed periodically within the Administrative Office to identify any potential problem area which can be addressed by the Office of Audit and Review during the course of routine management audits conducted in the courts.

DEFENDER SERVICES

GAO's internal control report identified a number of weaknesses in the defender claims process which if not corrected could result in erroneous payments.

Question. -- What actions has the Administrative Office taken to implement GAO's recommendations on defender claim vouchers?

Answer. Additional guidelines were issued in July 1986 to all clerks of the district courts to improve controls over, and the processing of, claims submitted by court appointed attorneys and persons providing expert and other services under the Criminal Justice Act. Included in these guidelines were instructions covering the proper physical control of blank voucher forms and a transmittal document to accompany all claims submitted to the Administrative Office for payment. Both of these procedures were recommended by GAO in their report issued in April 1986. Other recommendations contained in the GAO report are in the process of being reconsidered or implemented either wholly or in part, depending on the effect the decentralization of the processing of CJA claims will have on the recommendation.

Question. -- When will the decentralization of CJA claims go into effect which GAO said could expedite payments to attorneys as well as strengthen controls over these payments?

Answer. The Administrative Office will initiate pilot projects to expedite payments to Criminal Justice Act panel attorneys and experts in four district courts during mid-summer 1987. This project also is intended to strengthen controls over these payments. If the pilots are successful, we hope to implement the program nationally during the fall of 1987.

FEES OF JURORS AND COMMISSIONERS

GAO's internal control report also examined juror disbursement practices at three district courts and found that adequate controls were not in place to prevent or detect duplicate, erroneous, or fraudulent payments. GAO also found that the Administrative Office's post audit of juror vouchers is not capable of detecting duplicate payments or verifying the propriety of payments. According to GAO, the primary factor contributing to weak internal controls is that neither the Administrative Office's guidelines nor the courts' operating procedures give clerks detailed guidance on administering juror disbursements.

Question. -- What actions has the Administrative Office taken to implement GAO's recommendations to strengthen controls over juror disbursements.

Answer. Guidelines covering the juror payment process were issued to the courts in September, 1986. These guidelines specifically addressed the concerns of GAO with respect to erroneous and duplicate juror payments.

COURT SECURITY

You are requesting $46,300,000 for court security. We understand that this appropriation does not include the salary costs of U.S. deputy marshals who provide security in the actual courtroom during court proceedings.

Question. -- What is the total cost of court security if you included the salary cost of the Deputy Marshals assigned to courtroom security?

Answer. For FY 1988, the total cost would be $72,195,000. The U.S Marshals Service is requesting a total of $25,895,000 for 389 full-time permanent positions for courtroom security and the Judiciary is requesting $46,300,000.

Question. -- What other aspects of court security are not funded by this appropriation? How is each funded? What is the requested FY 1988 funding for each?

Answer. The other two elements not already mentioned above are the Technical Assistance program and the Personal Security program. Both are program elements of the U.S. Marshals Service and are funded in their appropriation request. The requested FY 1988 amounts for these programs are: Technical Assistance, $730,000 and Personal Security, $9,897,000.

Question. — To what extent have security incidents occurred during the last 5-years in courtroom proceedings where a Deputy Marshal (a) was not present and (b) was present? How many of the courtroom proceedings are not being covered by a Deputy Marshal but should be?

Answer. The risk criteria of the Attorney General's Task Force Report on Court Security (March 1982) is used to determine whether one or more Deputy Marshals should be assigned to a courtroom proceeding. Where Deputies were present, incidents have ranged from subduing unruly spectators to preventing prisoner escapes. On the other hand, where the evaluated risk indicated no need for a Deputy, there have been no reported incidents.

With respect to uncovered proceedings which should be covered, we are unaware of any. While there may be isolated manpower staffing problems, there are no reported statistics on proceedings not covered but which should be covered.

Question. What would be the cost to the Judiciary if a Deputy Marshal was present during all courtroom proceedings? Could contract security officers be used as a lower cost alternative to Deputy Marshals in providing courtroom security?

Answer.

The salaries and expenses of U.S. Deputy Marshals are provided out of funds appropriated to the Justice Department for the operation of the U.S. Marshals Service; therefore there would be no additional cost to the Judiciary. However, as noted above, the U.S. Marshals Service is requesting almost $26 million and 389 positions to provide courtroom security just at high risk (levels 3 and 4) proceedings as required by the Attorney General's Task Force Report on Court Security. This does not include coverage at low risk proceedings (levels 1 and 2).

Contract Court Security Officers (CSOs) are primarily responsible for perimeter security and screening. When resources permit and to the extent that perimeter security is not diminished, CSOs can be useful and effective in providing a security presence at low risk proceedings when requested to do so by the presiding judge and when such use has been approved by the district court security committee. Because the cost of a CSO is less than that of a U.S. Deputy Marshal, there may be some savings in using CSOs in lieu of deputy marshals. However, at higher risk proceedings, experience dictates and the Atttorney General's Task Force Report requires that one or more highly trained law enforcement officer(s), i.e., deputy marshal(s), must be used.

THE FEDERAL JUDICIAL CENTER

You are requesting $586,000 (a 5.1 percent increase) to cover workload increases and new program initiatives.

Question. -- What are the new program initiatives planned for FY 1988?

Answer. The Center's request for $586,000 is to cover the workload increase of providing training for 1,586 new personnel requested by the judiciary in the fiscal 1988 budget. That number includes 1,115 deputy clerks of which 36 are designated for the circuit courts, 254 for the district courts, and 825 for the bankruptcy courts. It also includes 817 new U.S. probation and pretrial services officers and 154 probation/pretrial clerks. In addition, we plan to provide supervisory training for existing personnel who are promoted as a result of these new personnel entering federal service.

Question. -- Has a decision been made to expand the district court case-weighing pilot time study to all district courts mentioned in GAO's recent report on the judiciary's methods for determining judgeship needs?

Answer. Yes, a decision has been made to expand the study nationwide.

Question. -- What has been the cost of this study to date, and what is the estimated cost for completing the study?

Answer. The pilot work consumed approximately one person year devoted to design, implementation, and analysis. This work was accomplished with the Center's existing research staff. About 85 percent of these costs were for design and development that will not be incurred again in the proposed national study. Direct costs during the pilot for travel, supplies, and postage amounted to approximately $2,500. The assistance of clerical staff in the courts was an important contribution, but the clerks reported as noted above that the assistance did not amount to a substantial burden.

The national study is expected to require--spread over the three-year life of the project--approximately one and a half person years from existing resources of the Center's professional research staff and a similar amount of nonprofessional support time. Direct costs for travel, postal expenses, and supplies are estimated at approximately $50,000 for the full three-year period. As in the pilot study, deputy clerks in the district courts will devote some time to the movement of papers in cases under study, but we expect that time to occasion no substantial burden. The study does not create a need to employ additional personnel either at the Center or at the district courts. The only other foreseeable costs might be very small costs for a statistical consultant on very specific questions of statistical sampling.

CASELOAD STATISTICS

Question. The majority of the Judiciary's budget request is for salaries and benefits for court employees. Most of the positions requested are based on caseload statistics and formulas developed by the Federal Judicial Center that compute staff needs. Please specify for each of the caseload measurement systems which are used to support requests for additional staff whether a reliability assessment has been made to test the accuracy of the statistics?

Answer. The caseload statistics and formulas were developed by the Administrative Office. Each staffing formula was tested for statistical accuracy and reliability using standard statistical measures. Staffing formulas were developed for the U. S. Probation and Pretrial Services Offices, and U.S. District and Bankruptcy Clerks' Offices.

Question. When were the assessments done and what were the results?

Answer. The statistical accuracy tests were done following the data collection or measurement phase of each work measurement study around the following dates:

U.S. District Court Clerks' Offices: Sep - Oct 1981
U.S. Bankruptcy Court Clerks' Offices: Oct - Nov 1984
U.S. Probation Offices: May - Jun 1981
U.S. Pretrial Services Offices: Nov - Dec 1984

Additionally, since these studies were completed, we have updated the work measurement formulas as conditions have changed in the courts. The results were that each of the staffing formulas meets or exceeds the minimum statistical requirements for this type of staffing standard.

JUDICIAL IMPACT STATEMENTS

Question. You make a very interesting proposal on page three of your statement when you suggest that "'judicial impact statements' accompany any legislation which could reasonably be expected to generate significant case filings or create new jurisdictions." How would you suggest Congress proceed to set up the mechanism to discharge this function?

Answer. The Judiciary, of course, would defer to the Congress as to the specific elements of any mechanism to require a "judicial impact statement". In the House of Representatives we have requested consideration of a House rule to require "judicial impact statements". A similar rule or other alternatives could be considered by the Senate as follows:

1. A Senate rule similar to the one requiring a statement of impact on state and local governments;
2. A Senate rule similar to the one requiring a CBO estimate with such an estimate to be provided by the Senate Judiciary Committee with information supplied by the Administrative Office of the United States Courts; or
3. Sequential or automatic referral of any legislation which could reasonably be expected to generate significant case filings or create new jurisdiction to the Senate Judiciary Committee.

DISTRICT COURTS

Question. How many Article III judgeship vacancies are there at this time and are you still projecting 46 vacancies for 1987 and 28 for 1988?

Answer. As of April 30, 1987 there were 57 judgeship vacancies. We are now projecting an average of 50 for fiscal year 1987 and 28 for fiscal year 1988.

Question. How many senior/retired judges are there now and are your projections of 282 and 289 for 1987 and 1988, respectively, still valid?

Answer. Currently, there are 287 senior/retired judges and we are now projecting 286 and 303 for fiscal year 1987 and fiscal year 1988, respectively.

Question. On page 5.39 you are requesting an increase of 254 deputy clerks for district courts as a result of both civil and criminal workload. While the criminal workload appears to be increasing as a result of the new drug act, what kinds of civil cases are driving the projected increase in your civil filings?

Answer. Except for the expected increase in Social Security cases, the projected increase is not based on large increases in a few case types. Instead, we anticipate small or moderate increases in many types. For example, the following general categories of cases increased between January and February 1987: contracts, real property, torts, prisoner petitions, and protected property rights (copyrights, patent, and trademark).

Question. Based on your latest available statistics, are your projected civil and criminal filings still valid?

Answer. Yes. Social Security filings have again started increasing (as predicted) and recovery of overpayment cases appear to be bottoming out. The remaining civil cases are gradually increasing as expected. Criminal filings are right on track.

Question. In the initial paragraphs of your opening statement you speak of the potential impact of the Administration's "War on Drugs" as possibly threatening "to deny some courts ability to handle tax collection, civil rights, federal questions and other significant civil litigation." Would you care to comment on some talk around this town to the effect that Administration support for the "war on drugs" is more verbal than financial?

Answer. No, however, drug filings have been increasing steadily in several areas over the last few years. In the last six months, criminal case and defendant drug filings increased significantly in Mexican border districts of Texas, Southern; Texas, Western; Arizona; and California, Southern. Case filings increased between 88 and 146%; defendant filings between 68 and 78%. In the remaining border state of New Mexico, drug cases increased 14%; defendants increased 15%.

BANKRUPTCY

Question. On page 5.37, we are estimating a bankruptcy caseload of 690,000 cases in fiscal year 1988. Is this estimate still valid? Do you expect the dramatic increases in the case filings you have been experiencing to continue in the future?

Answer. Preliminary filings for March 1987 increased at less than the rate necessary to reach the FY 88 forecast. Bankruptcy filings are volatile, however, and this may or may not indicate that the trend is changing. With only one quarter deviating from the forecast, it is too early to reasonably change it. The 20 to 30 percent annual increases will not continue, but we don't expect substantial decreases, either. Year-to-year increases in bankruptcies have been the norm throughout this century; for example, bankruptcies have decreased in only ten of the years since the end of World War II.

Question The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 authorized 52 additional bankruptcy judges to complement the 232 judges already authorized. To what extent will the funding you are requesting on page 5.12 for recalled bankruptcy judges fill the need for additional bankruptcy judgeships?

Answer The addition of 52 newly authorized bankruptcy judgeships will only partially meet existing and projected bankruptcy judgeship workload requirements in fiscal year 1988 and fiscal year 1989. The newly authorized positions were recommended to Congress by the Judicial Conference based on statistics and workload projections in 1985/86. Application of Judicial Conference approved standards to current workload requirements and filing rates could justify as many as 30 additional judgeships over the currently authorized number of 284. Therefore, the request for ten man years of recalled bankruptcy judges will only partially fill the need for additional judges.

Question. Last year, you were not able to provide accurate statistics on the bankruptcy workload being handled by Article III judges. Can you provide more precise information at this time?

Answer. The only information maintained on the bankruptcy workload handled by Article III judges is the number of matters withdrawn from bankruptcy to district court pursuant to 28 U.S.C. Section 157. During calendar year 1985 there were 1,790 withdrawals, in 1986 there were 544. These figures do not, however, include any situations where district judges are handling bankruptcy work in a particular location because of a vacant bankruptcy judgeship or because of lack of sufficient bankruptcy judgeships.

Question In your opening statement, you note that the Ninth Circuit is the only circuit out of 12 to establish a bankruptcy appellate panel, as is authorized under the provisions of 28 U.S.C. 1158(b). Why is it that no other circuit has done this?

Answer The Ninth Circuit has more bankruptcy appeals than any other circuit and is also the most geographically disperse circuit. It has found the bankruptcy appellate panel an effective means for dealing with these factors. Other circuits have not faced the same considerations and have chosen not to establish a panel.

PROBATION AND PRETRIAL SERVICES

Question. On page 5.20, you are requesting an increase of $500,000 in addition to the $1,500,000 you are currently receiving for contractual pretrial services. Why should this increase be disproportionately large?

Answer. This program has been in existence on a nationwide basis only since 1982. Because the pretrial function has not been fully funded, the program is still growing. As judicial officers become more aware of the services available under the Act, and as increasing numbers of defendants are interviewed before their bail hearings, judicial officers will make greater use of contract services such as inpatient drug treatment facilities as alternatives to placing defendants in jail to await trial. Contract services also assist in ensuring appearance for trial.

Question. On page 5.17, you have requested an additional $2,000,000 for your drug dependent offenders program which is in addition to an increase of $4.5 million in 1987. What is the status of your alcohol testing program?

Answer. In the current fiscal year to date, $10 million has been committed to both drug and alcohol testing treatment. The startup time for alcohol testing and treatment should be relatively short since most present drug aftercare contractors can provide alcohol testing and treatment services under existing contracts. This eliminates the need to go through the complete procurement cycle in areas of the country where a drug treatment contract is in place. In addition we have now started to contract for alcohol treatment as separate contracts.

Question. What is the current status in the courts of extending pretrial services through independent pretrial services agencies and through probation offices?

Answer. Nineteen districts have established separate offices for the provision of pretrial services. Fifteen districts provide pretrial services with their authorized probation officer positions. Fifty-five districts have an additional allocation of probation officers and three districts have an allocation of pretrial services officers as a carryover from the probation operated demonstration districts authorized by Title II of the Speedy Trial Act of 1974.

AUTOMATION

Question. On page 5.51, you are requesting $9,500,000 for the expansion of automated systems, which includes an increase of $3,900,000 over fiscal year 1987 for the office automation program. The five-year chart on page 5.54 of the justifications indicates that the annual cost of this program will increase by $730,000 in 1989 and by another $730,000 in 1990. When will this program be completed, and when can we expect reduction as a result of nonrecurring equipment purchases?

Answer. The Judiciary is expanding its use of modern technology to improve the way in which it conducts its business. We do not expect to see reductions as a result of nonrecurring equipment purchases. The Judiciary's office automation program is a continuous effort. We plan to buy equipment on a phased implementation schedule, to use it for five or six years, and then to replace it with new equipment. This will enable the Judiciary to avoid technical and physical obsolescence.

Question. The remainder of the $9.5 million, or $5,600,000, is requested for data communications in 1988. How is data currently being transmitted and will there be any offsetting savings in long distance telephone costs?

Answer. The Judiciary currently transmits a limited amount of data between court locations and the Administrative Office located in Washington, D.C., by using a Value Added Network. The Judiciary is installing computer systems in the courts. This decentralized environment requires that data be moved between court locations as well as to the Administrative Office. There will be a cost-avoidance in long distance telephone costs, since communications will no longer be initiated on an ad hoc basis, but through a planned system.

Question. With regard to the $1,100,000 request on page 5.55 for telecommunications, when do you expect that all telephone equipment will have been purchased? Will the cost of this program, nearly $15,000,000 in 1988, drop substantially when only equipment replacement becomes necessary?

Answer. Present plans call for all telephone purchases to be completed by 1990. While the cost of purchasing telephones will decrease by $5 million, it is unclear what the net reduction to the Judiciary will be because of the escalation of line and message unit charges.

INTERPRETERS

Question. On page 5.15, you request $285,000 to cover the costs associated with raising interpreter fees from $175 to $210 per day. How does this increased rate compare with that which the State Department is paying? Are your revised rates competitive and are you having any problems in obtaining competent interpreters?

Answer. The increased rate is $50.00 per day below that of the Department of State, and $90.00 per day below that of international organizations. For the most part we can still get interpreters, but increasingly interpreters, when offered another assignment at the higher fees, will take the more lucrative job, leaving the courts to find a substitute. As well, we have competition problems because court proceedings are frequently cancelled. In case of a cancellation, international agencies and the Department of State pay the full sum as if no cancellation had occurred. Courts only pay a minimum one-day attendance fee, even though a 3- to 6-week time period might have been reserved by the interpreter in compliance with the court's originally perceived need.

More important than daily rates, however, is the difficulty courts are having recruiting for full-time positions. The Department of State now pays as high as a GS-15 ($53,830 to $69,976) for non-supervisory interpreters, while the courts pay only $32,567 to $42,341. In many instances we compete for the same reduced pool of qualified persons (292 certified interpreters in the United States). Courts in Los Angeles, Texas, and Puerto Rico have not been able to fill vacancies—or as in the case of New York, it took several months and the court had only one or two applicants from which to choose.

Question. How many full-time interpreters do you now employ? Which, in your opinion, is more cost effective, full-time interpreters or contract interpreters?

Answer. We have 42 interpreter positions authorized. Eight are presently vacant. Full-time interpreter positions are more cost effective in major metropolitan areas where courts need at least one interpreter on at least 200 discrete days. In some geographic areas, however, this factor can be reduced if the court must spend travel monies to transport qualified interpreters or there are no freelance interpreters resident in the district, and the use pattern makes using freelance interpreters totally impractical. There is a need for each type, full-time staff and freelance interpreters, in the federal system.

NATIONAL COURT LIBRARY SYSTEM

Question. How has the level of services rendered by the National Court Library System been effected when Congress deferred approval of additional positions in fiscal years 1986 and 1987?

Answer. Because the National Court Library System has not received any of the positions requested in either fiscal years 1986 or 1987, new libraries are not able to be opened and legal research service is not able to be rendered to the court family in the most effective and efficient way possible. As the court library program has evolved since its inception in 1981, the courts have come to expect a high level of library and information service. Although it is not possible to list the effects of the shortage of authorized personnel on the courts in specific instances, the following are probable areas where manpower shortages are taking their toll:

1. Law clerks having to perform additional legal research tasks in difficult areas where librarians are expected to provide assistance, such as in the preparation of legislative histories.

2. Reduction in ability to service requests for information in a timely manner and to provide Interlibrary Loan services.

3. Reduced assistance in Computer Assisted Legal Research.

4. Law clerks must leave the court facility to retrieve materials from other public or private law libraries, which would otherwise be retrieved by library staff.

5. Delays or inability to issue library bulletins to advise court personnel of changes or new editions in lawbooks and legal research material.

Question. On Page 5.10, you are requesting appropriation language to make $500,000 available on a no-year basis to purchase lawbooks and other legal reference materials. How will this no-year language assist the courts in the purchase of lawbooks?

Answer. At the beginning of each fiscal year the Administrative Office is required to issue numerous purchase orders to various vendors for the continuation materials necessary to keep lawbook collections in chambers and central libraries current. The General Accounting Office has determined that this routine practice is necessary due to the annual nature of our appropriations. Identifying a specified amount of our total appropriation for the acquisition of continuation materials as "no-year" would allow for the issuance of standing orders for these materials which could be in force from one fiscal year to the next, thereby negating the requirement to reissue these routine purchase orders.

SPACE AND FACILITIES

Question. On page 5.16 you are requesting an increase for space rental charges and building services. What kind of justification does the General Services Administration (GSA) offer in raising your rental rates, given that you reported an increase of 12.93 percent in GSA rental rates last year?

Answer. The following letter from GSA accompanied the budget estimates used to develop the fiscal year 1988 estimates and is the only explanation received from GSA as to the derivation of their rental rates.

MAY 22 1986

Dear Mr. Macklin:

This letter transmits information which will assist you in determining your agency's fiscal year 1988 Federal Buildings Fund (FBF) budgetary requirements for space and related services.

For fiscal year 1987 we reduced the appraised rental rates for all buildings by 15 percent. The full commercial equivalent rental rates originally developed for implementation in fiscal year 1987 will be charged in fiscal year 1988.

Under the provisions of the current General Services Administration (GSA) Building Delegation Program, GSA will budget for the full cost of building operations and participating agencies will be required to pay full Rent. GSA will rebate a portion of the building rental to the participating agency in accordance with the specific provisions of the delegation agreement.

Agencies operating buildings under delegation agreements established prior to July 1, 1985 will continue to obtain reimbursement from GSA in fiscal year 1988 as provided under the terms of those agreements.

The following material is enclosed to assist you in preparing your fiscal year 1988 budgetary requirements:

Exhibit I - Your estimated fiscal year 1988 Rent based upon space occupied by your agency as of March 15, 1986.

Exhibit II - Instructions for developing your agency's fiscal year 1988 space increases for the period of March 15, 1986 through September 30, 1988, and;

Exhibit III - Instructions for reviewing reimbursable services including inflation factors to enable you to adjust your fiscal year 1986 recurring and non-recurring reimbursable service to project charges for fiscal year 1988.

The rates contained in Exhibit I are commercially equivalent rates adjusted to October 1, 1986. It is the General Services Administration's policy that the Rent rates per square foot used in Exhibit I are firm rates and will not be increased during fiscal year 1988. However, the total charge for your space is subject to change as space is added and/or relinquished by your agency during the period from March 15, 1986, to September 30, 1988.

If you have any questions, please have your staff contact Manfred van der Walde on 566-1954.

Sincerely,

WILLIAM F. SULLIVAN
Commissioner

Mr. James E. Macklin
Deputy Director
Administrative Office of
the U.S. Courts
Washington, DC 20544

Question What progress is being made on the proposal for the construction of a new office building for the Administrative Office?

Answer The report required by P.L. 99-229 on alternative ways to provide a building for the use of the Judiciary on government owned land immediately east of Union Station is nearly complete. A final draft has been circulated by the Architect of the Capitol and the Secretary of Transportation for review, and submission to the Congress is expected shortly.

In assessing alternatives for building the facility, the study group analyzed a range of options, from wholly government financed and executed to varying degrees of government participation in revenue and risk sharing with a private developer. To assure that accurate market conditions were covered, a competition including five nationally prominent developer-architect teams was held. The responses were exceptional in quality of design and economic terms were compared with the other possibilities.

When the report is submitted and the Congress has had an opportunity to review the findings and recommendations, authority to proceed with construction, in the manner Congress deems most advantageous, will be requested. The Judiciary hopes that this project can be moved forward expeditiously so that the elements of the Administrative Office can be collected in one place, with adequate space, and at a reduced cost to the government.

Question. On page seven of your opening statement you relate that GSA may delegate the design authority for particular projects to the judiciary. Has this actually been done with some projects and, if so, what are the indications of success in terms of efficiency and speed?

Answer. Most GSA delegations to the Judiciary for the accomplishment of design have occurred only recently. However, there are some generalizations which can easily be made regarding cost, efficiency and speed.

In general, we can accomplish the design faster and cheaper than GSA and at the same time be more responsive to the involved courts. Whether or not the design is "better" is highly subjective, but we think it is.

The savings in time, cost and efficiency are especially apparent when the design is accomplished in-house using AO resources. Where Architect/Engineer (A/E) contracts are required, we must follow many of the same procedures as GSA and the savings in time are not as dramatic as are the savings in cost and efficiency.

We have accomplished design under delegations from GSA both in-house and by A/E contract. However, we are not currently staffed to accomplish either and our capability at present is very limited.

JUROR PAYMENTS

Question. With respect to your comments on fees of jurors and commissioners, on page 18, to what extent does the judiciary make use of the six person jury in civil cases? Is it possible to use six person juries - and thus reduce the cost - in all civil cases?

Answer. Well over 90 percent of all federal civil jury cases are tried before 6 person juries. As a result, federal expenditures for jury fees are 7 to 8 million dollars less per year than if all civil trials were being conducted before 12 jurors. Eighty-eight districts (all but six federal courts) have adopted local rules which provide for less than 12 person juries in civil cases. In 84 of these courts the smaller jury, usually 6 persons but in some places 8 or 9, is used in all civil cases. The rule in the other four courts permits either a 6 or 12 person jury at the discretion of the judge but the 6 person option is the more common practice even at these locations. Six courts have not yet agreed to any use of smaller civil juries because the majority of their judges hold some reservations as to the constitutional propriety of altering the 12 person concept. Additional savings of at least $450,000 per year can be realized if and when these six courts adopt the smaller civil jury.

COURT SECURITY

Question. On page 8.6 you are requesting an increase of $5,383,000 for an additional 240 Court Security Officers which brings the total of Court Security Officers to 1,354. In light of similar increases last year and the year before, does not it appear that the court security system may be growing faster than prudent security requirements?

Answer. On the contrary--the Court Security System up to now has not prudently kept pace with the security requirement. As of this moment, there are over 60 court facilities around the country with a sitting, full-time judicial officer having no Court Security Officer protection. In addition, there are many other facilities with only marginal protection. Considering the current environment of high security court proceedings and threats to the judicial system, the current request is both justified and necessary to protect the Federal judiciary.

Question. Do your increased funding requests reflect an increase in threats against Federal judges?

Answer. The increased funding request is a result of several happenings. While it is true that the overall trend of judicial threats is climbing, so too are the numbers of judicial officers to be protected, the number of different places of holding court, and the number and type of high risk proceedings. Generally speaking, the requested increase reflects an increase in both actual and potential threats against the Federal judiciary.

Question. What kind of criteria are you using to insure that you are indeed providing adequate security?

Answer. The two basic criteria used to determine adequate security levels are the U.S. Court Design Guide and the Report of the Attorney General's Task Force on Court Security. In addition, each judicial facility is evaluated both by the local District Court Security Committee and by security specialists in or under contract to the U.S. Marshals Service. This evaluation helps ensure that the unique or unusual aspects of each facility are considered in the allocation of protective resources.

PUBLIC DEFENDERS

Question. In your opening statement, you ascribe some of the increase in cost of defender services to "the increasingly complex nature of cases in such areas as fraud, embezzlement, and high technology..." Shouldn't such defendants be capable of financing their own defense?

Answer. Federal Defenders and Criminal Justice Act panel attorneys are representing increasing numbers of defendants in complex white collar crime and narcotics cases because IRS tax liens and civil and criminal forfeiture proceedings are denying these defendants access to funds with which to retain counsel. In some situations, the failure of a business venture is the factor that brings the defendant to the attention of the Department of Justice. In other instances, embezzlement and fraud allegations and the initiation of criminal proceedings result in the collapse of an apparently lucrative enterprise and the insolvency of its operators. Either situation can result in an inability of individuals to retain counsel and the corresponding need to appoint counsel. In every case the defendant is required to establish indigency to the satisfaction of the court.

FULL TIME POSITIONS

Question. According to your Budget Request, you are asking for an overall increase of 1,711 full time permanent positions in fiscal year 1988. Do you have the administrative capability to recruit, process and hire that many new people in a single fiscal year and still keep up with normal attrition?

Answer. Yes. These additional positions are spread out among judges' staffs, magistrates' staffs, probation offices, courts of appeals clerks' offices, district court clerks' offices, bankruptcy clerks' offices, and court libraries, so that net additions to each of the court components are not exceptionally large. The largest increase is for the bankruptcy court clerks' offices which are experiencing unprecedented increases in filings, and the Administrative Office has been and expects to continue to allocate positions to these courts on a quarterly basis so that the clerks will spread out the recruitment and hiring process.

Question. How many vacancies do you have against the 20,649 positions in your fiscal year 1987 program?

Answer. Excluding the program supplemental which is still pending there are 19,613 authorized positions in fiscal year 1987. Currently there are about 900 vacancies.

Question. How many of these vacancies have been unfilled for over 12 months?

Answer. Most of our vacancies are deputy clerk positions and to our knowledge, none of these have been unfilled for over 12 months. We do not keep records on vacancy rates but it is the policy of the courts to fill vacant deputy clerk positions as soon as possible. We have not received any reports from the courts that they are experiencing any problems filling vacancies.

We do have, however, four vacant judgeships and supporting staff that were authorized in fiscal year 1985.

TRACKING, MONITORING, COLLECTING AND ENFORCING CRIMINAL FINES

Question. The General Accounting Office (GAO) published a report in October 1985 where they found that procedures needed to be developed between the Department of Justice and the Administrative Office of the United States Courts for the tracking, monitoring, collecting and enforcing of criminal fines. As of December 31, 1985, the GAO reported that "action was in process" on each of their findings. When will the actions on the GAO recommendations be completed?

Answer. In a report to the House Committee on Government Operations in November, 1985, we indicated that forms and procedures had been developed and were being implemented. As noted in the question, however, the recommendation for establishing a central system for reporting, tracking, and accounting for all court-imposed criminal fines was directed to the Attorney General. Therefore, we are not able to answer as to what actions, if any, remain to be completed to fully implement the recommendation.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

BIENNIAL BUDGET

Question. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

Answer. Since our budgetary requirements are based on caseload and caseload estimates are based on statistical forecasts, it is difficult, if not impossible, to assess the impact of a biennial budget process without more study than has been done at this juncture.

However, initial investigation and study reveals some possible advantages and gives reason for further consideration of this issue.

It appears that better planning and evaluation would result in program and budget areas, with concomitant improvement in the establishment of goals and objectives and in the application of resources. In addition, we believe we would be less constrained in our operations due to the need to live with continuing resolutions as a substitute for the enactment of our appropriations bills. We might also get more involvement of judges in the discussion and consideration of budget preparation. A two-year period would give time for a more deliberate approach to budget preparation.

Forecasting problems, as noted above, could be a problem, but on the positive side it is believed that we can correct for them through currently used processes such as through lapsing of budget authority, or the preparation of supplemental budget requests. For example, we can and do concede positions where funds have been appropriated for them, when the positions have never been filled. Forecasting problems are not insurmountable and the job could be done on a biennial basis.

Question. Approximately what proportion of your annnual appropriation request would you consider simply repetitious of the previous year's submission?

Answer. About 95 percent of our budget is repetitious of the previous year's submission in the sense that about 95 percent of our budget request is needed to fund positions and programs which have been previously authorized.

Question. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

Answer. The forecasting problem would be the only one that could pose difficulty, and it would affect a relatively small percent of the budget total. We rely on other agencies for information on such things as caseload. For example, our caseload forecasts are based on conversations with knowledgeable officials at the Department of Justice as to the posture of that agency with regard to drug prosecutions and the importance Justice attaches to the arrest and prosecution of immigration violators.

In the biennial budget process, we would be operating into the future for three years and in all but one year of any four-year presidential term we would be operating into the term of an as yet un-nominated and un-elected president, with no idea of priorities and policies. Civil and criminal caseloads are directly related to policy. The possible variations, based on previous experience, could be as high as 12 percent in criminal filings, but the impact on the total judicial budget would be minimal.

Question. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

Answer. We can isolate some aspects that show promise of budgetary savings possible in a biennial system. However, it is impossible at this time to estimate with real accuracy how much the savings would be, without much more research than we've so far been able to give this question.

There would be some savings as a result of volume purchasing which would be enhanced under a biennial budget process. Furniture, for example, represents approximately one percent of the total Judiciary budget and indications are that considerable savings could be obtained in volume purchases at the district level. Also, a two-year budget process could provide for more economical purchasing through larger orders in other areas.

Question. If you oppose the biennial budget concept, please give this subcommittee your reasons why.

Answer. We do not oppose the biennial budget concept and believe it could be quite advantageous in efficiency and effectiveness.

STATE JUSTICE INSTITUTE

STATEMENT OF JOHN F. DAFFRON, JR., JUDGE, TWELFTH JUDICIAL CIRCUIT, CHESTERFIELD, VIRGINIA ON BEHALF OF THE STATE JUSTICE INSTITUTE

ACCOMPANIED BY DAVID I. TEVELIN, EXECUTIVE DIRECTOR, STATE JUSTICE INSTITUTE

Senator BUMPERS. Our next request is for the State Justice Institute for $12,892,000.

Like Legal Services that we heard from earlier, the Institute also has the power to submit its budget directly to the Hill. That is a good thing, since President Reagan has also included no funds for this organization in his budget.

I recall that the State Justice Institute was a special interest of Senator Heflin and came out of his experience as Chief Justice of the Supreme Court of Alabama. The Institute provides grant funding for the same kind of assistance to the state courts that the Federal Judicial Center provides directly to our Federal Judiciary in the form of training, research and development.

Testifying on behalf of the Institute's request is Judge John F. Daffron, Jr. of the Twelfth Circuit of Chesterfield, VA accompanied by David I. Tevelin; is that correct?

Mr. TEVELIN. That is correct.

Senator BUMPERS. Judge Daffron, I think this is the first time the Institute has testified before this subcommittee. Your full statement will be printed in the hearing record. I will ask you to present a summary of the request and then we will have some questions.

Judge DAFFRON. Thank you, sir. As you said, I am John Daffron. I am appearing for the Board of Directors but more specifically, for Chief Justice C. C. Torbert, the Chief Justice of Alabama. Chief Justice Torbert was hospitalized Sunday. We expect him to be well soon. I know we all look forward to having him appear before your subcommittee in the future.

Chief Justice Torbert's remarks have been prefiled. With your permission, sir, I would like to summarize briefly the points he made.

Senator BUMPERS. Certainly.

CONGRESSIONAL OBJECTIVES

Judge DAFFRON. I have three things I would like to present to you: Our plan, that is, the State Justice Institute's plan for meeting Congress' objectives in establishing the Institute; I would like to summarize our activities to date, if I may; and explain our specific budget proposals.

We recognize that Congress clearly intended the State Justice Institute to respond to the needs defined and articulated by State courts and State court organizations. I would like to convey to you, sir, how clear our understanding is, not only of what Congress intended the Institute to do, but also of what it was not intended to do.

Rest assured that the leadership of the Board of Directors is composed of State judicial leaders. This Board will not allow the Institute to be a Federal agency imposing its policy choices on the State courts, nor will the Institute become a large bureaucracy, complete with planning staffs and so-called court experts to fulfill its own priorities; and thirdly, the Institute will not support projects that underwrite the basic day-to-day operations of States' courts.

The Institute has already taken major strides toward achieving the congressional objectives. The State Justice Institute recognizes that the process of grant application is both expensive and arduous. It is a time consuming procedure, and we have attempted to simplify and shorten that procedure.

We do this by requesting potential applicants to submit concept papers setting forth the programs that they wish to have funded. The Board reviews those concept papers, and if the proposed undertaking meets with the Board's approval, then we invite the applicant to submit a formal grant application.

PROGRAM GUIDELINES

We issued a comprehensive program guideline. In keeping with the spirit of the legislation, not only did we indicate the Board's preference for special interest programs, but we made it clear that the Board's list is not an exclusive list. If the papers that we received or current research or professional literature is brought to our attention that indicates that there are other programs of special interest to the courts themselves, these topics will be included in funding proposals and treated as special interest projects.

The Board is meeting tomorrow to determine which concept papers it would like to see presented as formal applications. The Institute will award funds on a competitive basis in accordance with the criteria published in its guidelines. Fiscal 1987 funds will be awarded in two rounds of funding. Round one is intended to be concluded with awards made in August of this year. Round two should culminate early in fiscal 1988.

Our ability to meet this schedule is possible only because of legislation which assured that our fiscal 1987 funds would remain available until they are expended. This provision, we suggest, is essential to our ability to conduct an orderly, responsible and fair program without unnecessary speed and attendant risk of waste.

We thank you and the members of the Committee for your contribution to this process, and we hope this provision can be included in future appropriations. The list of special interest programs that has been established by the Board includes topics such as: Education and training programs for judges; programs to reduce expense and delay in litigation; implementation and evaluation of alternative dispute resolutions; the use of technology to improve operation of court management systems, both in the trial courts and in the appellate courts; and programs designed to assure fairer treatment of victims of crime and witnesses in both civil and criminal cases. We also look for innovative research programs designed to result in improved administration of justice in State courts and in the reduction of the work burdens in the Federal judiciary.

FIRST ROUND CONCEPT PAPERS

The concept paper deadline for round one funding was April 17th. We received 193 papers by that deadline, and they requested over $31 million in grants. Papers have been submitted by courts in 25 States, despite the relatively short turnaround time available for submission and the need for approval of their papers by their own respective State supreme courts.

The Board was heartened to see the expression of interest and perhaps the Congress should be, as well. The tremendous number of high-quality proposals submitted in response to our solicitations, we believe, clearly demonstrates the need for the State Justice Institute.

APPROPRIATIONS REQUEST

Specifically with regard to our appropriations request, an increase of slightly less than $5.7 million is requested to allow the Institute to operate at its fully anticipated staffing level of 14 full-time, permanent personnel. This would bring the Institute to a total funding level of less than $13 million, still below the $15 million originally authorized by Congress for the State Justice Institute.

We submit, sir, that there are several specific factors that would justify the requested increase: First, the requested appropriation for fiscal year 1988 is consistent with the original funding intentions of Congress in enacting the State Justice Institute legislation.

By reducing the Institute's original authorized figures, Congress has already effected a substantial reduction in the scope of the Institute's interests for budgetary reasons.

In recognition of the fiscal restraint that the Gramm-Rudman-Hollings Act requires of all federally-supported organizations, the Institute has made an appropriation request that is below even the reduced authorization level passed by the Congress.

Second, the request of $5.7 million better recognizes, perhaps, both the extent of the State courts' need for this money and the national scope of the problems which State Justice Institute funding was supposed to address. As noted earlier, we have received already requests for ten times the amount that we have available for Round one funding.

The third reason we would offer, sir, is that there is no other specifically designated source of funding for State courts to undertake these matters of national consequence. Moreover, the Constitutional Separation of Powers Doctrine, which has been associated with an Executive Branch agency providing funds to Judicial Branch organizations, is of real concern to many States and may inhibit full court participation in any Department of Justice grant program, such as those administered by the Bureau of Justice Assistance.

MATCHING SHARE

In addition, it is also important to note that the modest increase sought is actually an investment of up to 50 percent more in matching support that the statute requires of most Institute grantees. Thus, with the matching funds the potential additional amount available for State court improvements next year would rise to approximately $8.5 million, which could make a significant difference in the Institute's ability to develop and transfer already proven programs and to demonstrate innovative programs that cannot be replicated on a national basis. The return on this investment, we suggest, is also likely to be much larger in the form of increased court efficiency at a savings through implementation of successful programs.

Finally, sir, the additional funds would also permit the Institute to extend worthwhile programs we begin this year and initiate any new demonstration programs that build on our experience and the interests of the States generated by this first year funding. The modest increase sought better assures the Institute will be able to establish long-term constructive change in State courts. The Institute will be fully staffed and operational for fiscal year 1988 and in a firm position to meet the needs of its recipients.

The subcommittee will, of course, be kept fully informed of the Institute's programs, developments and application process during the coming months. I would hope that my remarks on behalf of Chief Justice Torbert will assure you and members of the committee that the State Justice Institute is rapidly becoming the visible and viable entity envisioned by Congress; an organization or entity that really does have a dramatic impact on the quality of justice provided by the State courts, not only now, but in the future.

I thank you, sir, for the opportunity to appear before you. Mr. Tevelin, the Executive Director, and I will be happy to answer any questions.

[The prepared statement of Honorable Clement Clay Torbert, Jr. follows:]

State Justice Institute

TESTIMONY OF THE HONORABLE CLEMENT CLAY TORBERT, JR.

Good afternoon, Mr. Chairman. I am C. C. Torbert, Jr., Chief Justice of the Supreme Court of the State of Alabama and Chairman of the Board of Directors of the State Justice Institute. I appreciate the opportunity to appear before you today on behalf of the Institute.

I am especially honored to present the first appropriations request made by the Institute itself. As you know, the establishment of a State Justice Institute was originally proposed by the Conference of Chief Justices in 1979. I am privileged to serve as the Institute's first Chairman and to present your Committee with a budget that we hope will bring to fruition the vision of my fellow Chief Justices.

I would like to do three things in my testimony today: (1) present our plan for meeting Congress' objectives in establishing the Institute; (2) summarize our activities to date; and (3) explain our specific budget proposals.

CONGRESSIONAL OBJECTIVES

With respect to our intention to satisfy Congress' objectives, the Board of Directors recognizes that the impetus to create the State Justice Institute originated in the Congress. The Institute owes its existence to many legislators who provided bipartisan support for our enabling legislation and appropriations. In particular, we must especially recognize the strong leadership of Senator Howell Heflin and Representative Robert Kastenmeier, and the firm fiscal support of the distinguished Chairman of this Subcommittee. Congress recognized that the Institute could play an important role in the American legal system by greatly enhancing both the quality of justice in the State courts and the public's confidence in the ability of those courts to dispense justice, and by finding better ways of allocating caseload burdens among the diverse Federal and State courts.

Creation of the Institute was also advocated by the leadership of the State judiciaries -- including, I must note, Chief Justice J.B. Ness of South Carolina -- and the many organizations that serve the courts, including not only the Conference of Chief Justices, but the National Center for State Courts, the American Bar Association, the National Judicial College, the National Council of Juvenile and Family Court Judges, the National Association of Women Judges, and the Conference of State Court Administrators as well.

Regrettably, the Administration has chosen to consistently oppose both the creation and the implementation of the Institute, primarily on budgetary grounds. It is my earnest hope that, with adoption of the modest appropriation we request, we might be able to persuade the Administration that the benefits to the courts and the public far exceed the relatively insignificant financial costs of the Institute's programs.

We also recognize that Congress clearly intended the State Justice Institute to respond to the needs defined and articulated by the State courts and State court organizations. I would like to convey to you today my clear understanding not only of what Congress intended the Institute to be, but also my clear understanding of what it was not intended to be. Rest assured that under my leadership -- and the leadership of a Board of Directors comprised of persons with distinguished roles and backgrounds in the State judiciaries -- the Institute will not be a Federal agency imposing its policy choices on the State courts. Nor will the Institute become a large bureaucracy replete with planning staffs and so-called "court experts" to fulfill its own priorities. Further, the Institute will not support projects that underwrite the basic day-to-day functions of the State courts.

The Institute will, instead, be a force for constructive change in the State courts through the support of quality programs identified by the courts across the nation. Our priorities will be determined by the needs and interests expressed by the State courts and their organizations. Our programs may be innovative, but they will not be new simply for newness' sake; rather, they will serve the courts by developing effective solutions to common problems and by transferring proven programs to jurisdictions that have not been able to afford them or to adapt them to their unique circumstances. Programs transferring technology and information about ideas that have succeeded in other jurisdictions may be both the most productive and the most cost-effective programs that the Institute can support.

The Institute has already taken major strides toward achieving the objectives outlined above. Most importantly, in March we issued a comprehensive Program Guideline. The Guideline presented our grant policies and areas of interest, and invited the courts, judicial organizations, researchers and all other interested parties to submit concept papers for grants. The response, which I will describe to you in greater detail in a moment, was overwhelming.

The Guideline invited applications in every substantive funding area authorized under our enabling legislation. We did not want any fundable proposal to be eliminated from consideration in our first year of existence as a result of an unwarranted presumption that we could define the courts' priorities or needs better than the court themselves.

The Guideline also established several program areas of "special interest" to the Board. In keeping with the spirit of the legislation, however, the Guideline makes clear that the Board's list of "special interest" areas is not exclusive. If the concept papers submitted to the Institute, or current research or other professional literature brought to our attention indicates that other areas are of "special interest" to the courts themselves, funding proposals in those areas will also be treated as "special interest" projects. The Board is meeting tomorrow to make that determination and to determine which concept papers it would like to see presented as formal applications. I will summarize our "special interest" areas later in my remarks.

I would also like to note that, unlike prior Federal grant programs available to the State courts, our funds may also be used for civil justice, as well as criminal justice, purposes. This will assure that programs seeking to remedy problems related to court backlogs and court management will be able to address all the underlying aspects of the problem and accordingly, be more likely to succeed. Our goal is to improve the overall quality of justice available to the public in the State courts.

START-UP ACTIVITIES

The Administration did not nominate any members of the Board until July of 1986. The Senate acted expeditiously on the nominees; nine members of the Board were confirmed and sworn into office by Chief Justice Burger on September 29, 1986. As of this date, two vacancies on the Board remain to be filled.

Because neither the Institute's authorizing statute nor its original appropriation permitted FY 1986 funds to be expended after the end of that fiscal year, the $7.6 million appropriated for fiscal year 1986 lapsed on September 30, 1986 and was returned to the Treasury.

The Institute therefore began fiscal year 1987, the second year of its three-year authorization, with nine members of an eleven-member Board in place and a start-up budget of $7.2 million.

The Institute was incorporated in the State of Virginia on September 29, 1986. The Board met in late September and early October of 1986 at which time it began preliminary work on budget projections and program design.

The Board also authorized a nationwide search for an Executive Director. This search was conducted by mailing the announcement to over 100 organizations concerned with the operation of the courts, advertising in a number of law-related journals and publications, and several national newspapers. The Institute received nearly 300 applications for the position of Executive Director. The Board interviewed candidates on January 15 and 16, 1987, and ultimately selected David Tevelin as its Executive Director and Richard Van Duizend as Deputy Director. I am happy to have the opportunity to introduce Mr. Tevelin and Mr. Van Duizend to you today. Both gentlemen came on board officially in February. I am also happy to report to you that the Institute is now fully staffed and operational, with a total of eleven highly qualified and very hard-working individuals on board.

In its first several months, therefore, the Institute has worked quickly and responsibly to establish an organization and a process that will assure the development of a program that meets Congressional objectives.

PROGRAM GUIDELINES

Under the Guideline, the Institute will award funds on a competitive basis in accordance with the criteria published in the Guideline. Fiscal Year 1987 funds will be awarded in two rounds of funding. Round 1 is intended to conclude with awards in August, 1987; Round 2 should culminate in early Fiscal Year 1988. Our ability to establish this schedule was possible only by virtue of a provision in our appropriations legislation which assured that our Fiscal Year 1987 funds would remain available until expended. This provision is essential to our ability to conduct an orderly, responsible, and fair grant program without unnecessary speed or risk of waste. We thank you for your great contribution to this process and hope that such a provision can be included in future appropriations legislation.

As I noted earlier, the Program Guideline established several areas of "special interest." In addition to the "special interest" areas designated by the Board, others may be established on the basis of the needs of the State courts demonstrated by the concept papers, the current research literature, or other persuasive information coming to the attention of the Board. Projects within the scope of a special interest area will be accorded a preference in the awards process.

The list of special interest areas established by the Board was itself rooted in the expressions of need coming from the State courts and their allied judicial and professional organizations. The list includes:

- Education and training programs for judges, including the development of innovative training materials and curricula and the preparation of State court education plans;
- Programs to substantially reduce expense and delay in litigation;
- Implementation and evaluation of dispute resolution methods that have a substantial likelihood of resolving disputes more fairly, more expeditiously, and less expensively than the traditional judicial process;
- The use of technology to improve the operation of court management systems at both the trial and appellate levels;
- Programs designed to assure the fairer treatment of

victims of crime and witnesses in both criminal and civil cases; and

- Innovative research programs designed to result in the improved administration of justice in the State courts and the reduction of work burdens on the Federal courts. Such research could address issues related to the conduct of multistate litigation in the State courts, a reduction in difficulties associated with Federal habeas corpus writs involving State convictions, and studies of the impact of Federal diversity jurisdiction on the State courts.

The concept paper deadline for Round 1 funding was April 17, 1987. We received 193 papers by that deadline requesting over $31 million in grants. Papers were submitted by courts in 25 states, despite the relatively short turn around time available for submission and the need for approval of their papers by their State Supreme Court.

The Board was heartened to see this expression of interest, and the Congress should be as well. The tremendous number of high quality proposals submitted in response to our solicitation clearly demonstrates the need for the Institute. The Board's gratification is tempered, however, by the realization that it has only $3 to $4 million available for award in Round 1. That means we will have to be extremely judicious in our selection of formal applicants and grantees, but it also means that those programs ultimately receiving our funds will hold the most promise of improving the State courts in the most important areas of their operations.

We will provide the Subcommittee a list of the courts, organizations, and individuals we ask to submit formal applications. In this connection, I want to assure you that we have established an application review process that is both expeditious and conducive to careful and informed decisionmaking. Our goal is to ensure that the Institute's resources will be used as efficiently and effectively as possible, without imposing undue burdens and complexities -- red tape, if you will -- on our applicants.

To that end, the Institute published a proposed Grant Guideline in the Federal Register on May 11, 1987. That Guideline sets out the programmatic, fiscal, and administrative requirements attendant to Institute grants. It is a lean package, imposing only those controls necessary to assure the accountability and prudent use of public funds. We have sent your staff a copy of the guidelines and would certainly appreciate any guidance you or the staff might wish to provide us.

APPROPRIATIONS REQUEST

With regard to our appropriations request, an increase of $5,692,000 is requested to allow the Institute to operate at its originally anticipated staffing level of 14 full-time permanent personnel. This brings the Institute to a total funding level of $12,892,000, still below the $15 million level originally authorized by Congress in the State Justice Institute Act.

The Board of Directors feels that its request is a modest one but one that will allow the Institute to adequately build on its first-year effort and demonstrate the impact Congress intended the State Justice Institute to have. There are several specific factors that justify the requested increase.

First, the requested appropriation for FY 1988 is consistent with the original funding intentions of Congress in enacting the State Justice Institute Act. In the 96th Congress, the bill establishing the Institute authorized "such sums as may be necessary" to carry out the purposes of the Act. The bill, S. 2387, passed the Senate unanimously by voice vote. The House did not act on the bill.

In the 98th Congress, H.R. 3403 authorized $20,000,000 for the Institute in FY 1984, $25,000,000 for FY 1985, and $25,000,000 for FY 1986. A subsequent House bill, H.R. 4145, contained identical authorizations for FY 1985, 1986, and 1987. The Senate reduced the authorizations to $13,000,000 for FY 1986, $15,000,000 for FY 1987, and $15,000,000 for FY 1988. The Senate figures were adopted by the House and enacted into law as part of the State Justice Institute Act. Pub. L. 98-620, 98 Stat. 3336.

By reducing the authorization figures, Congress has already effected a substantial reduction in the scope of the Institute's functions for budgetary reasons. In recognition of the fiscal restraint that the Gramm-Rudman-Hollings Act requires of all Federally-supported organizations, the Institute has made an appropriation request that is below even the reduced authorization levels passed by Congress. The $12,892,000 requested would still permit the Institute to perform at the general level of activity deemed appropriate by a cost-conscious Congress.

Second, the request for an additional $5,692,000 better recognizes both the extent of the State courts' need for this money and the national scope of the problems State Justice Institute funding was supposed to address. As noted earlier, we received requests for ten times the amount we have available for Round 1 funding. The Board believes that the $12,892,000 the Institute requested would enable the Institute to meet only the most compelling needs of the State judiciaries.

Third, there is no other specifically designated source of funding for the State courts. Other agencies in the Department of Justice are authorized to provide such funding, but they have no mandate to do so and, in fact, have decreased recent funding to the courts, possibly in anticipation of the Institute's aid to the State courts. Moreover, the constitutional "separation of powers" problems associated with an executive branch agency providing funds to judicial branch organizations are of real concern to many States and may inhibit full court participation in any Department of Justice grant programs, such as those administered by the Bureau of Justice Assistance.

In addition, it is also important to note that the modest $5,692,000 increase sought is actually an investment of up to $2,846,000 in matching support that the statute requires of most Institute grantees. In order to assure that the matching requirement has its maximum impact, the Guidelines establish a funding preference for applicants who can provide a cash match, as opposed to match in the form of services or "in-kind" contributions. When matching funds are considered, the potential amount available for State court improvements rises to $8.5 million, which can make a significant difference in the Institute's ability to transfer already proven programs and demonstrate innovative programs that can be replicated nationally. The return on the additional investment is also likely to be much larger in the form of increased court efficiency and savings through the implementation of successful programs.

Finally, the additional funds will also permit the Institute to extend the worthwhile programs we begin this year and initiate new demonstration programs that build on our experience and the interest of the States generated by first-year funding. The modest increase sought better assures that the Institute will be able to establish long-term constructive change in the State courts. The Institute will be fully staffed and operational for all FY 1988 and in a firm position to meet the needs of its recipients.

We believe that the 14 staff positions requested are the minimum number necessary to enable the Institute to carry out its mandate. In addition to the Executive Director and Deputy Director, we anticipate a Program Division consisting of 4 persons and a Finance Division of another 4 persons, with an additional 4 support staff.

The $7.2 million appropriated for fiscal year 1987 was generally recognized as an amount necessary for start-up expenses given that the nine members of the eleven-member Board were not sworn in until September 29, 1986. During the first half of this fiscal year, staffing was only minimal while a search for an Executive Director was conducted. The Board of Directors believes that its request is the minimum necessary to enable the Institute to have the impact intended by Congress.

The Subcommittee will, of course, be kept fully informed of the Institute's program development and application process during the coming months.

I hope my testimony today assures you that the State Justice Institute is rapidly becoming the viable entity envisioned by the Congress: an entity which will have a dramatic impact on the quality of justice provided by the State courts both now and in the future.

Thank you, Mr. Chairman. I would be happy to respond to any questions you may have.

2/87

INDEPENDENT AGENCIES
STATE JUSTICE INSTITUTE

necessary expenses of the State Justice Institute, as authorized by Public Law 98-620, $12,892,000

7 Current Appropriation..$ 7,200,000
8 Request pending.. ....
8 Program amendment.. 12,892,000
8 Revised request.. 12,892,000

Program and Financing

	1987 Appropriation	1988 Request Pending	1988 Proposed Amendment	1988 Revised Request
gram by activities:				
eneral administration...............	$ 500,000	....	$ 892,000	$ 892,000
rants...............................	6,700,000	....	12,000,000	12,000,000
Total obligations................	7,200,000	....	12,892,000	12,892,000
ancing:				
udget authority....................	7,200,000	....	12,892,000	12,892,000
ation of obligations to outlays:				
igations incurred, net..............	7,200,000	....	12,892,000	12,892,000
igated balance, start of year.......	0	....	1,000,000	1,000,000
igated balance, end of year.........	-1,000,000	....	4,000,000	4,000,000
utlays..............................	6,200,000	....	9,892,000	9,892,000

Analysis by Object Class

		1987 Appropriation	1988 Request Pending	1988 Proposed Amendment	1988 Revised Request
1	Personnel compensation.	$ 221,000	$ ...	$ 506,000	$ 506,000
2	Personnel benefits	43,000	...	90,000	90,000
1	Travel and transportation of persons. .	48,000	...	65,000	65,000
2	Transportation of things.	2,000	...	1,000	1,000
3	Rent, communications, & utilities . . .	75,000	...	115,000	115,000
4	Printing and reproduction	12,000	...	15,000	15,000
5	Other services	35,000	...	50,000	50,000
6	Supplies and materials.	9,000	...	20,000	20,000
1	Equipment	55,000	...	30,000	30,000
1	Grants	6,700,000	...	12,000,000	12,000,000
	Total Obligations.	7,200,000	...	12,892,000	12,892,000

Personnel Summary

	1987 Appropriation	1988 Request Pending	1988 Proposed Amendment	1988 Revised Request
otal number of full-time permanent positions. .	9	...	14	14
otal compensable workyears:				
Full-time equivalent employment	6	...	14	14

JUSTIFICATION

INTRODUCTION

This is the third budget submission for the State Justice Institute authorized by Title II of Public Law 98-620, the State Justice Institute Act, signed by President Reagan on November 9, 1984. The authorized funding levels included in the Act are $13,000,000 for fiscal year 1986, $15,000,000 for fiscal year 1987, and $15,000,000 for fiscal year 1988.

In keeping with the budgetary restraints imposed on all Federal agencies, the initial 1986 request was for $8,883,000, $4,117,000 below the authorized level. The sum of $8,000,000 was appropriated by the Congress. This was subsequently reduced by the provisions of the Gramm-Rudman-Hollings Act to $7,656,000. Though appropriated by Congress, funds for fiscal year 1986 lapsed because of delays in appointing members of the Board of Directors.

Nine members of the eleven-member Board were eventually sworn in on September 29, 1986. The Fiscal Year 1987 appropriation of $7,200,000 provided sufficient funds for start-up costs and a small grant program of approximately $6,700,000. Administrative funds provided for little more than one-half of that estimated for a fully-staffed State Justice Institute of fourteen permanent full-time personnel. For fiscal year 1988, the Board of Directors is requesting $12,892,000, an increase of $5,692,000 over the fiscal year 1987 level. This will permit full staffing of the Institute, and related expenses, and a modest increase in the grant program to respond to the anticipated increase in awareness of the Institute's programs on the part of state court systems. The request is well below the $15,000,000 originally authorized by Congress for second-year funding.

Though the Act provides that the Institute's annual budget request shall be submitted directly to Congress with the role of the Office of Management and Budget limited to that of review and comment, the Institute, as a courtesy, did submit its budget request to OMB as part of the President's fiscal year 1988 budget preparation process. OMB and the President are recommending no funds for fiscal year 1988 and repeal of the Institute's authorizing legislation.

HISTORY AND STRUCTURE

Congress established the State Justice Institute as a private non-profit corporation to further improvement in the administration and operation of the courts of the States and thus assure each person ready access to a fair and effective system of justice. The non-profit structure was chosen to assure the Institute's independence in keeping with the separation of powers doctrine. It is to be governed by an eleven-member board of directors (six of whom must be State judges and one a State court administrator) appointed by the President from a panel of nominees submitted to him by the Conference of Chief Justices following consultation with other interested organizations. Four public members will be appointed directly by the President. Nine members of the Board have been appointed to date. The board has complete control over operations of the Institute including the selection and tenure of the executive director, and approval of all grants, contracts, and cooperative agreements.

The Act anticipates that the Institute will operate with a small administrative staff and that its objectives will be met largely through grants to the courts and their support organizations, as well as law schools and other organizations working in the field of judicial administration.

The Institute has broad authority to fund research, technical assistance, demonstration, clearinghouse, education, training and related activities to improve the administration of justice. Funding is specifically authorized for 15 categories of programs which recognize the relationship between the diverse civil and criminal caseloads of the courts and the need to improve the judicial system as an integrated whole. The Act also recognizes the close relationship between the State and Federal judicial systems and anticipates cooperative programs to improve the effectiveness of each. The specifically authorized categories of programs are as follows:

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;
(6) to support State court planning and budgeting staffs and to provide technical

assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

(9) to conduct studies of the causes of trial and appallate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this title, as may

be deemed appropriate by the Institute.

The Act specifically provides that the Institute shall not be considered a department, agency, or instrumentality of the Federal Government and that its officers and employees, except for certain employee benefits, shall not be considered officers or employees of the United States. The Institute is covered by the Freedom of Information Act and must meet generally accepted Federal standards for the auditing of its own accounts as well as the monitoring and evaluation of programs supported by it. In addition to annual audits by an independent certified public accountant, the financial transactions of the Institute may be audited by the General Accounting Office with reports and recommendations going from the Comptroller General of the United States to Congress and the Attorney General. The Attorney General, in consultation with the Federal Judicial Center, also will report to Congress on the work and effectiveness of the Institute.

State courts receiving funds from the Institute must provide a 50 percent match but awards to non-profit organizations may be up to 100 percent of the project amount. The Act specifically forbids use of Institute funds to supplant existing State or local funding of court programs or services and there are strong prohibitions on any type of lobbying activity by the Institute or its grantees at the national, State, or local levels of government.

REQUEST

This request represents an increase of $5,692,000 to allow the Institute to operate at its originally anticipated staffing level of 14 full-time permanent personnel and at slightly below the funding level originally anticipated by the Congress in its authorizing legislation.

We believe that 14 staff positions are the minimum necessary to enable the Institute to carry out its mandate. In addition to the Executive Director and Deputy Director, we anticipate a Program Division consisting of 4 persons and a Finance Division of another 4 persons, with an additional 4 support staff.

The $7.2 million appropriated for fiscal year 1987 was generally recognized as an amount necessary for start-up expenses given that the nine members of the eleven-member Board were not sworn in until September 29, 1986. During FY 1987, staffing was only minimal while a search for an Executive Director was conducted; as such, other expenses were also estimated at significantly below their annualized rate.

The Board of Directors feels that its request is a modest one but one that will allow the

Institute to adequately build on its first-year effort and demonstrate the impact originally anticipated by the Congress for the State Justice Institute. There are several specific factors that justify the requested increase.

First, the requested appropriation for FY 1988 is consistent with the original funding intentions of Congress in enacting the State Justice Institute Act. In the 96th Congress, the bill establishing the Institute authorized "such sums as may be necessary" to carry out the purposes of the Act. The bill, S. 2387, passed the Senate unanimously by voice vote. The House did not act on the bill.

In the 98th Congress, H.R. 3403 authorized $20,000,000 for the Institute in FY 1984, $25,000,000 for FY 1985, and $25,000,000 for FY 1986. A subsequent House bill, H.R. 4145, contained identical authorizations for FY 1985, 1986, and 1987. The Senate reduced the authorizations to $13,000,000 for FY 1986, $15,000,000 for FY 1987, and $15,000,000 for FY 1988. The Senate figures were adopted by the House and enacted into law as part of the State Justice Institute Act. Pub. L. 98-620, 98 Stat. 3336.

By reducing the authorization figures, Congress has already effected a substantial reduction in the scope of the Institute's functions for budgetary reasons. The $12,892,000 appropriation request is below even the reduced authorization levels passed by Congress but would still permit the Institute to perform at the general level of activity deemed appropriate by a cost-conscious Congress.

In addition, the $12,892,000 request better recognizes both the extent of the State courts' need for this money and the national scope of the problems State Justice Institute funding was supposed to address. For its first round of FY 1987 funding, the Institute received 193 papers requesting over $31 million in grants. That sum is ten times greater than the amount available for Round 1 funding. Papers were submitted by courts in 25 States, despite the relatively short turn around time available for submission and the need for approval of their papers by their State Supreme Court. The Board believes that the $12,892,000 requested would enable the Institute to meet only the most compelling needs of the State judiciaries.

Further, there is no other specifically designated source of funding for the State courts. Other agencies in the Department of Justice are authorized to provide such funding, but they have no mandate to do so and, in fact, have decreased recent funding to the courts, possibly in anticipation of the Institute's aid to the State courts. Moreover, the constitutional "separation of powers" problems associated with an executive branch agency providing funds to judicial branch organizations are of real concern to many States and may inhibit full court participation in Department of Justice grant programs, such as those administered by the Bureau of Justice Assistance.

It is also important to note that the modest $5,892,000 increase sought is actually an investment of up to $2,846,000 in matching funds that the statute requires of most Institute grantees. When matching funds are considered, the potential amount available for State Court improvements rises to $8.5 million which can make a significant difference in the State Justice Institute's ability to transfer already proven programs and demonstrate innovative programs that can be replicated nationally. The return on the additional investment is also likely to be much larger in the form of increased court efficiency and savings through the implementation of successful programs.

Finally, the additional funds will also permit the Institute to extend the worthwhile programs we begin this year and initiate new demonstration programs that build on our experience and the interest of the States generated by first-year funding. The modest increase sought better assures that the Institute will be able to establish long-term constructive change in the State courts. The Institute will be fully staffed and operational in FY 1988 and in a firm position to meet the needs of its recipients.

INDEPENDENT AGENCIES
STATE JUSTICE INSTITUTE

2/87

Identification code 48-0052-0-1-752		1987 Appropriation	1988 actual	1988 estimate	1988 estimate
Budget Appendix Page	Heading		Request Pending	Proposed Amendment	Revised Request
....	State Justice Institute	$7,200,000	$	$12,892,000	$12,892,000

For necessary expenses of the State Justice Institute, as authorized by Public Law 98-620, $12,892,000 to remain available until expended.

INDEPENDENT AGENCIES
STATE JUSTICE INSTITUTE

2/87

Program and Financing

Identification code 48-0052-0-1-752	1987 Appropriation	1988 actual Request Pending	1988 estimate Proposal Amendment	1988 estimate Revised Request
Program by activities:				
00.01 General administration	500,000	$....	$ 892,000	$ 892,000
00.02 Grants	6,700,000	....	12,000,000	12,000,000
10.00 Total Obligations	7,200,000	....	12,892,000	12,892,000
Financing:				
40.00 Budget authority	7,200,000	....	12,892,000	12,892,000
Relation of obligations to outlays:				
71.00 Obligations incurred, net.	7,200,000	....	12,892,000	12,892,000
72.40 Obligated balance, start of the year	0	1,000,000	1,000,000	1,000,000
74.40 Obligated balance, end of the year	-1,000,000		4,000,000	4,000,000
90.00 Outlays	6,200,000	1,000,000	9,892,000	9,892,000

BOARD OF DIRECTORS

Senator BUMPERS. Judge, how many members are you supposed to have?

Judge DAFFRON. Eleven.

Senator BUMPERS. How many have been appointed?

Judge DAFFRON. Nine.

Senator BUMPERS. What happened to the other two?

Judge DAFFRON. I don't know, sir. Perhaps the answer lies in the White House.

Senator BUMPERS. Is this a Presidental appointment?

Judge DAFFRON. Yes.

Senator BUMPERS. Who is going to review these applications?

Judge DAFFRON. The Board members and staff. The Board will be an active, managing Board rather than an advisory Board, and State officials, State judges will, in fact, review and vote on these applications.

Senator BUMPERS. Out of the almost $13 million you are asking for, how many will go in grants?

Judge DAFFRON. Thirteen million next year?

Mr. TEVELIN. Twelve million will be program funds.

Senator BUMPERS. Twelve.

Judge DAFFRON. In that we are funding startup costs now.

LOCATION OF INSTITUTE

Senator BUMPERS. Why was this thing set up in Alexandria, VA? Why didn't we put it in Little Rock?

[Laughter.]

Judge DAFFRON. It was a close decision, sir.

Senator BUMPERS. I'll bet.

[Laughter.]

Senator BUMPERS. Alexandria just beat Little Rock out, right?

Judge DAFFRON. Barely, barely. The Congress, Federal grant-making organizations, national judicial organizations are located in the Washington, DC area; perhaps that tipped it.

Senator BUMPERS. Really, there isn't any reason for it to be in Alexandria as opposed to Los Angeles or any place else?

Judge DAFFRON. No, sir, there is not. In our first organizational meeting, we had discussions about the location, that was the first order of business. There was much discussion about whether or not, in fact, it should be in Denver or the West Coast to indicate that it is a national organization. Initially, because we had lost the first year of funding, and because there were attendant activities by staff and Board members interacting with congressional staff, we thought it was essential that it be in the Washington area. But we are located in Virginia, which has nothing to do with that being my home State, because we were persuaded perhaps by its location in Virginia that it would not appear as simply another Federal agency, but a private, under statute, private non-profit corporation funded by the Congress but not located within the District of Columbia.

Senator BUMPERS. Judge, I have got a series of questions here. We are running under a time constraint this morning. I am going to submit these questions to you for the record. We would appreciate a detailed response to these as early as possible.

Judge DAFFRON. We would be pleased to do that, sir.

Senator BUMPERS. You said that you had applications from 25 States?

Judge DAFFRON. Yes, sir.

Senator BUMPERS. You don't intend to try to allocate this money on a regional or State basis. What if all the best applications came from New York? Would they get all the money?

Judge DAFFRON. We intend to provide some allocation geographically.

MATCHING REQUIREMENT

Senator BUMPERS. Is there any matching requirement in any of these?

Judge DAFFRON. Yes, sir; a State match of 50 percent of the money awarded.

Senator BUMPERS. You are not going to give any grants to anybody who can't match the 50 percent?

Judge DAFFRON. No. No, sir. That is for a State court agency, there would be a match, and we are looking favorably for a hard match rather than a soft match.

Senator BUMPERS. I hope you would demand a hard match.

Judge DAFFRON. Thank you.

Senator BUMPERS. You know how soft that soft match is sometimes.

Judge DAFFRON. Indeed.

Mr. TEVELIN. We are also giving a bonus for applicants that provide more than the required match as an incentive.

CORRESPONDENCE

Senator BUMPERS. The subcommittee has received letters from the Conference of State Court Administrators, the National Association of Women Judges, Conference of Chief Justices, the National Council of Juvenile and Family Court Judges and the American Judges Association with regard to the State Justice Institute funding for fiscal year 1988. The letters will be printed in the record at this point.

[The letters follow:]

[Short recess.]

Conference of State Court
Administrators

May 14, 1987

Honorable Ernst F. Hollings
Chairman, Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies
S-146-A The Capitol
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the Conference of State Court Administrators, an initial sponsor of legislation creating the State Justice Institute, to urge its continued funding in Fiscal 1988.

As you know, the Institute was unable to use its first year (FY 1986) appropriation because of delays in the appointment of its board of directors. Accordingly, the Fiscal 1988 appropriation will provide funding for only its second year, the minimum necessary if the Institute is to have the opportunity to establish its program and prove that it can do the work we in the state courts believe essential to the future of our justice system.

The Conference of State Court Administrators also wishes to express its thanks to the subcommittee for the generous support it has provided to the Institute in the past. Given the initial efforts by its new staff and board of directors, we are confident the Institute will fulfill its promise and be worthy of the trust we all have placed in it.

Respectfully yours,

Robert L. Doss, Jr.

Robert L. Doss, Jr.
President

RESOLUTION X

State Justice Institute

WHEREAS, The Conference of Chief Justices has been the principal sponsor of the State Justice Institute and continues to believe it essential to the effective operation and orderly development of the nation's justice system; and

WHEREAS, Administration policy has delayed organization of the Institute and threatens its future funding and operating authority; and

WHEREAS, The Institute, initially authorized for Fiscal Years 1986, 1987, and 1988, lost its first full year of operating authority and its initial appropriation of $7.6-million because of administration policy; and

WHEREAS, The Institute now must be reauthorized and funded if it is to have the opportunity to fulfill the critical mission assigned to it by Congress;

NOW, THEREFORE, BE IT RESOLVED, That the Conference of Chief Justices respectfully urges the 100th Congress to (1) adequately fund the Institute for Fiscal 1988 and (2) provide the continuing operating authority necessary for the Institute to accomplish its original legislative mandate; and

BE IT FURTHER RESOLVED, That the Conference of Chief Justices directs its Committee on State-Federal Relations, with the assistance of the Washington Liaison Office of the National Center for State Courts, to coordinate the Conference's efforts to secure the refunding and reauthorization of the Institute.

Proposed by the State-Federal Relations Committee of the Conference of Chief Justices at the 10th Midyear Meeting in Gleneden Beach, Oregon, on February 5, 1987.

Reply to:

Washington Liaison Office
Suite 608 - 444 N. Capitol St. N.W.
Washington, D.C. 20001

Tel: 202/347-5924

NAWJ

National Association of Women Judges

May 18, 1987

Honorable Ernest F. Hollings
Chairman, Subcommittee on Commerce,
Justice, and State, the Judiciary
and Related Agencies
S146A The Capitol
Washington, DC 20510

Dear Senator Hollings:

The National Association of Women Judges, having urged in October 1983 the establishment of the State Justice Institute, is pleased that the Institute is well on the road to providing funds for state court improvement programs. On behalf of NAWJ, I thank you for the effort your subcommittee has made to fulfill the goals of the State Justice Institute Act.

Because the Institute lost its first full year of operating funds, we are concerned that the mission of the State Justice Institute Act be given renewed and vigorous support. We urge the Congress, as it considers the Institute's appropriation for fiscal year 1988, to provide sufficient funds to carry out the original purposes of the Institute. To this end, we respectfully ask your subcommittee to recommend an adequate appropriation for the Institute's second year of operations.

If the subcommittee procedures so allow, please insert this letter into the hearing record for the Institute's appropriation request for fiscal year 1988.

Very truly yours,

Christine M. Durham

Christine M. Durham
President

Conference of Chief Justices

May 14, 1987

Honorable Ernest F. Hollings
Chairman, Subcommittee on Commerce, Justice,
and State, the Judiciary, and Related Agencies
S-146-A The Capitol
Washington, D.C. 20510

Dear Mr. Chairman:

The Conference of Chief Justices is delighted that the State Justice Institute, thanks to the support provided by your subcommittee, is well into its first year of operations.

We have been pleased and impressed by the manner in which the new staff and board of directors have set about the task of organizing the Institute and formulating its initial policy and program guidelines. These developments, and the speed at which they have been accomplished, give good cause to believe that the Institute will play with distinction the critical role assigned it in the authorizing legislation.

As indicated by the attached resolution, adopted by the Conference at its Midyear Meeting February 5, 1987, we continue to believe the Institute essential to the effective operation and orderly development of the nations's justice system. We therefore urge the subcommittee to continue its support by providing an adequate appropriation for a second year of operations.

If it is in keeping with subcommittee procedures we would appreciate having this letter and accompanying resolution inserted in the hearing record for the Institute's Fiscal 1988 request.

Sincerely yours,

Robert C. Murphy

Robert C. Murphy
President

NATIONAL COUNCIL OF JUVENILE AND
FAMILY COURT JUDGES

1987 MAY 19 AM 10 24

May 13, 1987

Honorable Ernest F. Hollings
Chairman, Subcommittee on Commerce,
  Justice, State and Judiciary
Senate Appropriations Committee
125 Senate Russell Office Bldg.
Washington, D. C. 20510

Dear Senator Hollings:

I write on behalf of our constituency, family and juvenile court judges in this country, to seek your support of the State Justice Institute (SJI). Specifically, I hope that the Congress will see fit to provide for the modest appropriation which the SJI seeks for 1988.

The state judiciary is vitally affected by federal programs and initiatives as well as by decisions of the federal courts. In juvenile and family courts in particular, current high volumes of cases involving drug and alcohol abuse, child abuse and neglect, family breakup, parental non-support and delinquency severely test the capacities of judges, court-related personnel and volunteers to discharge adequately their responsibilities to the children and families before these courts and to the public.

State courts need and will benefit from the educational, informational, technical assistance and applied research programs provided for under the SJI legislation.

Although it is only now being implemented, we have been impressed by the early progress of the SJI through the energetic efforts of its staff and distinguished board members. Without an appropriation for next year this carefully and soundly conceived mechanism to help improve the effectiveness of the state courts will die. In the total scheme of things, the funds sought by the SJI are relatively modest. The potential outcomes, however, can dramatically and positively impact the state court system.

Please know that we fully endorse and support the aims and goals of the Institute and trust respectfully that you will consider our affirmation, when reviewing the Institute's appropriation request.

With our warm esteem and best wishes for continued success, I am

Yours respectfully,

Louis W. McHardy
Executive Director,
Dean, National College of
  Juvenile and Family Law

AJA

American Judges Association

Serving the justice system since 1960

May 15, 1987

Hon. Ernest F. Hollings
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary,
and Related Agencies
S-146A The Capitol
Washington, D.C. 20510

Dear Mr. Chairman:

The American Judges Association (AJA) urges that your subcommittee provide adequate funding to the State Justice Institute (SJI) during Fiscal Year 1988--its second year of operation.

The Board of Governors of the American Judges Association was honored to be addressed by Hon. C.C. Torbert, Jr., Chairman of the State Justice Institute, during its recent midyear meeting. Several members also had an opportunity to speak with Hon. John F. Daffron, Jr., secretary of SJI, during that meeting and discuss the possibilities of the Institute in reaching its important goal--to improve the administration of justice in the states. AJA is excited about the benefits that judges, court personnel, and (most importantly) the private citizens facing the justice system may receive as a result of SJI-funded grants.

I know that the subcommittee has supported SJI in the past and hope it will continue to support such a worthy organization.

Sincerely,

Barbara T. Yanick

Barbara T. Yanick
President

SUBMITTED QUESTIONS

Senator BUMPERS. That is a good idea, too. I will submit these other questions to you for the record. Thank you very much, gentlemen.

Mr. TEVELIN. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Institute for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Question. You indicate that the Institute received 193 papers requesting $31,000,000 in grants. How much of the $31,000,000 was for projects that the Institute has identified as special interest areas?

Answer. Approximately 165 concept papers proposing projects totalling approximately $27,300,000 were in special interest areas identified by the Institute. This represents 85 percent of the total concept papers received and 87 percent of funds requested.

Question. When the Institute appeared before the House Appropriations Committee, was any mention made of their interest in funds being provided to the National Council of Juvenile and Family Court Judges?

Answer. No, there was nothing mentioned regarding funding for the National Council of Juvenile and Family Court Judges (NCJFCJ). It is our understanding, however, that the Subcommittee Report will expect us to consider funding for the Council.

Question. Does the Institute intend to process the grant applications with its own staff of 11 or will you use some kind of peer review?

Answer. For the concept paper review process we used members of the Board of Directors with special expertise in certain areas to serve as peer reviewers to augment staff reviews. We have not determined whether the application review process would require a different approach. However, the Board of Directors has established a committee to approve when and under what circumstances peer reviewers may be used in the application process should the need arise.

Question. In the allocation of grant funds, will the Institute have some priorities to assure a fair distribution between the richer and poorer states? For instance, how can we be assured that the Courts of Arkansas and South Carolina have a real chance of competing with California, Illinois and Massachusetts?

Answer. We have established geographical distribution of funds as a consideration in the review process. The Board also fully understand that our role is to serve State courts across the nation, not just a select few.

Question. How much of the Institute's 1987 expenditures would be for start-up of the Institute and non-recurring in 1988? Please provide a list of such expenditures for the record.

Answer. One-time start-up costs include: Phone system purchase, computer local area network purchase; purchase of other office equipment such as the copy machine and typewriters, etc.; furniture and furnishings; and certain consultant contracts associated with setting up the organization. The approximate total cost for these items is $150,000. For fiscal year 1988 these nonrecurring items are more than offset by the annualization of other costs for salaries, rent, utilities, maintenance agreements, supplies and modest inflationary adjustments.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

BIENNIAL BUDGET CYCLE

Calls for budget reform are increasingly heard as budget deadlines are too often missed, important budget decisions are delayed, appropriation bills and other direct spending legislation are held up in committee, and omnibus spending bills take the place of timely and orderly consideration of individual bills. One procedural reform that is being considered is the two-year budget cycle where budget and appropriations matters would be considered in the first year, and authorizations and oversight would be undertaken in the second year.

Question. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

Answer. The State Justice Institute could operate effectively under a biennial budget process. Unlike many federal entities, the operations portion of the Institute's budget request represents only approximately 10 percent of the total funding. As such, it is likely that the Institute would be less vulnerable to adverse economic factors or uncontrollable operational demands than agencies with operational budgets which represent a more substantial percentage of their total funding request. From a programmatic perspective, a biennial budget process would allow for a more orderly and certain grants process, particularly for State Courts that must incorporate a match for grants into their budget cycles.

Question. Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission?

Answer. Because the State Justice Institute is in the first year of operations, future budget requests will contain a significant amount of new material, especially with respect to program accomplishments. While the format is likely to remain fairly constant, data will change and any program increases would constitute new material as well. At this point we would estimate that 50 - 70 percent of future budget request would represent new information.

Question. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

Answer. Because we do not have the advantage of past experience to assist in anticipating future events it is difficult to specify potential difficulties in preparing and submitting a two-year budget. Experience to date indicates that future needs may include clarification of the enabling legislation rather than addressing budgetary resource fluctuations. Amendments of extreme urgency may require consideration in the supplemental budget process as well as in the authorization process.

Question. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

Answer. While we have no firm estimates on potential savings, it is apparent that a two-year budget cycle could facilitate improvements in resource planning and program execution. We would expect to avoid certain costs associated with the annual process allowing increased emphasis on grants award and management activities.

Question. If you oppose the biennial budget concept, please give this subcommittee your reasons why.

Answer. We support the biennial budget concept with respect to the Institute's operations so long as there is a way of addressing any unanticipated budgetary needs in the off year.

LETTER FROM NATIONAL ASSOCIATION OF ATTORNEY GENERAL

[CLERK'S NOTE: Subsequent to the hearing, the Subcommittee received a letter from Christine T. Milliken, Executive Director and General Counsel of the National Association of Attorneys General. By direction of the chairman, the letter and enclosure have been printed in the record.]

[The letter follows:]

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
HALL OF THE STATES
444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 628-0435

1987 JUN 26 PM 3:31

June 25, 1987

The Honorable Ernest F. Hollings
125 Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Hollings:

Enclosed please find a copy of our Association's Resolution in support of the State Justice Institute, which Attorneys General recently adopted at our summer meeting. The Resolution supports reauthorization and an FY 88 appropriation for the State Justice Institute.

With best personal regards, and

Sincerely,

Christine T. Milliken

Enclosure

cc: Attorney General Dave Frohnmayer

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Summer Meeting
June 8-11, 1987
Coeur d'Alene, Idaho

X

RESOLUTION

IN SUPPORT OF STATE JUSTICE INSTITUTE

WHEREAS, the State Justice Institute was established by Pub. L. 98-620 (42 U.S.C. 10701 et seq.) to improve the administration of justice in the State courts of the United States; and

WHEREAS, the Congress has charged the State Justice Institute to:

1) direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

2) foster coordination and cooperation with the Federal Judiciary;

3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

4) encourage education for judges and support personnel of State court systems; and

WHEREAS, Congress is considering reauthorization and FY 88 appropriation for the State Justice Institute; and

WHEREAS, state Attorneys General, who are the states' chief legal officers, are also officers of the state courts, and frequently appear before the state judicial branch; and

WHEREAS, efforts that the State Justice Institute is charged with fostering that are designed to ensure an effective and efficient state judicial system will assist state Attorneys General in carrying out their responsibilities in both civil and criminal cases; and

WHEREAS, the American Bar Association, the Conference of Chief Justices, and the National Council of Juvenile and Family Court Judges, among others, support reauthorization and FY 88 appropriation for the State Justice Institute; and

NOW, THEREFORE BE IT RESOLVED, that the National Association of Attorneys General supports reauthorization and FY 88 appropriation for the State Justice Institute; and

BE IT FURTHER RESOLVED, that the Association authorizes its Executive Director and General Counsel to make these views known to the Administration, the Congress, and other interested parties.

UNITED STATES SENTENCING COMMISSION

STATEMENT OF WILLIAM W. WILKINS, JR., CHAIRMAN, THE UNITED STATES SENTENCING COMMISSION

ACCOMPANIED BY JOHN R. STEER, CHIEF COUNSEL, UNITED STATES SENTENCING COMMISSION

Senator BUMPERS. Judge, how are you? Have a seat, gentlemen.

The subcommittee will now consider the request of the U.S. Sentencing Commission. The request is in the amount of $5,600,000 and will continue the current staff level of 54 full-time permanent positions. We are pleased to have Judge William Wilkins, Jr., of the Fourth Circuit, who is also Chairman of the Sentencing Commission.

Judge Wilkins is accompanied by John R. Steer, the Chief Counsel of the Commission. Senator Hollings has asked me to say that he knows both Judge Wilkins and Mr. Steer well, as both worked for Senator Thurmond and rendered great service to South Carolina before going on to their present endeavors.

Judge Wilkins, this is the Commission's first appearance before the subcommittee. We have reviewed your prepared statement, and it is an excellent account of the results of the guidelines submitted to the Congress last month. In accordance with our unusual practice, we will print your full statement in the record and ask you to begin with a summary of your full statement before we go to our questions. Please proceed.

Judge WILKINS. Thank you very much, Mr. Chairman. I will have just a very few summary remarks to make. The Sentencing Commission began its work about 18 months ago when its members were appointed to begin the task of promulgating sentencing guidelines for our Federal courts. These guidelines, of course, must be submitted to the Congress for its review.

We did submit the initial set of guidelines to the Congress on April the 13th, the statutory deadline date, an then on May 1st, we followed that submission with a series of technical and conforming amendments.

We reached this stage of our work after a series of efforts to develop guidelines that would be sophisticated, but also guidelines that would be workable, practical and which would truly serve our courts and meet the Congressional mandate.

We published a guideline submission in September of last year as a vehicle for public comment. We held a number of public hearings in Washington, DC, and throughout the country. We received hundreds of opinions, statements and briefs by lawyers, judges, defense attorneys, probation officers, law professors and others. We then used that experience to draft guidelines in January of this year which we published in the Federal Register and circulated widely.

We held another set of public hearings. From that process, we developed the guidelines which were submitted to you and other members of the Congress just a few weeks ago.

We have conducted our business openly. All of our regular meetings have been open to the public. We have developed a number of working groups consisting of practitioners, judges, probation officers and others who have come to Washington and worked with us on a series of issues that we had to resolve. We have, as I say, held public hearings to get the widest input before we made our submission of these guidelines to you.

Right now, we are developing a number of projects that are essential to the full implementation of guidelines. One is a supplemental report which we will submit to Congress very soon. We are developing a program for testing of the guidelines in the field with Judges applying the guidelines to actual cases before the effective date. We have a clinical testing program on-going here in Washington. We are developing a process for data collection from all sentences imposed under the guidelines, as the statute requires us to monitor operation of the guidelines. We are also to become a clearinghouse for sentencing information.

We are preparing an analysis of disparity under present sentencing practices compared to sentencing under the guidelines, and we will submit a report on that soon. I guess, most importantly, we are developing a training program for all the judges and probation officers, U.S. Attorneys, defense attorneys and all other members of the justice family who will be using these guidelines in the very near future.

This is an extensive program, and we are doing it in coordination with the Administrative Office of the Courts, the Federal Judicial Center, and the Education and Probation Committees of the Judicial Conference.

I think the success of the guidelines will largely depend on how well we train those in the field to implement the program.

As far as the budget is concerned, you have my prepared statement, and I will be glad to answer any questions.

[The prepared statement of William W. Wilkins, Jr., follows:]

THE UNITED STATES SENTENCING COMMISSION
1331 Pennsylvania Avenue NW
Suite 1400
WASHINGTON, D.C. 20004
(202) 662-8800

TESTIMONY OF WILLIAM W. WILKINS, Jr.

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you today on behalf of the United States Sentencing Commission.

During the past year, our Commission has accomplished the prodigious task of developing an initial set of sentencing guidelines and policy statements for the federal criminal justice system. As required by the 1984 Sentencing Reform Act, the Commission recently submitted the promulgated guidelines to Congress on April 13 for a six-month period of Congressional review. Subsequently, the Commission submitted to Congress on May 1 a package of technical, conforming and clarifying amendments to the initial guidelines. Following the six-month Congressional review period, the guidelines, as modified by these amendments, will go into effect on November 1 of this year, unless Congress, by law, provides otherwise.

A copy of the sentencing guidelines, with the amendments incorporated, has been provided to each Member of Congress. The Commission is also furnishing the document to all federal judges, magistrates, U.S. attorneys, federal public defenders and probation offices.

The Commission is now in the process of finalizing a supplemental report on the guidelines for submission to Congress and others who may be interested. This report will expand on the explanation of the guidelines contained in Chapter One of the guidelines document and the commentary accompanying the guidelines. The report will also provide detailed information on several areas of considerable interest to Congress and, no doubt, to this Committee, such as the projected impact of the guidelines on prison population and correctional resources. Additionally, this report will compare expected sentences under the guidelines to current sentencing practices and to the U.S. Parole Commission Guidelines. Finally, it will demonstrate how the guidelines will substantially reduce unwarranted sentencing disparity, which was a principal reason for Congress enacting the Sentencing Reform legislation. This report will be available to the Committee within the next few days and should provide information relevant to the appropriations decisions Congress must make.

Mr. Chairman, while I will be pleased to respond to any questions which the Committee may have regarding the sentencing guidelines recently submitted to Congress, I will focus my statement here on the activities in which the Commission is likely to be engaged during the next phase of its ongoing work. In addition to preparation of the previously-mentioned supplemental report and perhaps other supporting or explanatory materials, there are two primary tasks on which our Commission must focus in the weeks ahead.

First, the Commission is developing procedures and a program for rigorous field testing of the sentencing guidelines. Although we have tested the guidelines in the "laboratory", so to speak, by applying the guidelines in our office to the facts of recent cases as summarized in presentence investigation reports, we need to do more of this activity. More importantly, the Commission desires to test the guidelines in a number of federal districts around the country using current cases which come before the courts for sentencing. This kind of practical exercise not only will reveal whether the guidelines are appropriate to the kinds of cases which can be expected to arise under them, but also whether they are understandable, practicable and reasonably consistent in results, regardless of the particular probation officer and/or judge involved in applying them.

Second, the Commission must devote substantial time and resources to the development of training materials and programs for "educating" the federal judiciary, probation officers, prosecuting attorneys and defense attorneys in the application of the guidelines. While it would not be prudent for the Commission to begin training programs until it is reasonably clear that the guidelines will be acceptable to Congress, the process of developing educational materials and an outline of possible training programs is one in which the Commission is already engaged. In this regard, we are cooperating with the Federal Judicial Center and expect to work with the Administrative Office of the U.S. Courts, particularly the Probation Division, the Justice Department and others.

Whether the guidelines go into effect in November, as is scheduled under current law, or whether their implementation is stayed for an additional period, these activities of field testing and training are of paramount importance in the coming months. They will necessarily involve substantial (in relation to the Commission's budget) resource commitments in terms of staff and funding.

In addition to these immediate tasks of field testing and training, there are a number of longer range responsibilities given to this agency under the 1984 Sentencing Reform Act which the Commission must begin to emphasize now that the initial guidelines have been promulgated. For example, the Commission's enabling statute provides that the Commission is to collect and analyze research data on application of the guidelines by sentencing courts, refine the initial set of guidelines, serve as a national clearinghouse for sentencing information, propose changes in criminal statutes as needed, and a number of other related tasks.

The task of refining and expanding the initial set of guidelines is an especially important one. As with any major new innovation, whether it be a new Federal program, major rewrite of tax law, or other similar change in the status quo, there will no doubt be some "glitches" that are discovered in the sentencing guidelines which will need to be corrected. Additionally, the Commission made a conscious decision in this initial body of guidelines to adopt a deliberate, evolutionary approach to sentencing reform. For example, we did not promulgate guidelines for all of the more than 2000 Federal criminal statutes, but instead decided to concentrate on those offenses involving an estimated 90 percent of the cases expected to occur. In the coming months, we expect to expand the list of covered offenses by preparing new guidelines.

Similarly, the Commission did not fully address the issue of organizational sanctions, and we intend to devote further efforts to developing guidelines for sentencing corporations and other organizations which commit criminal violations. There are also a number of less visible and less frequently used procedures on which the Commission must yet develop policy guidance, such as the operation of prisoner transfer treaties, sentence modification, temporary release and others. Finally, the Commission expects to use data from application of the initially promulgated guidelines to refine and modify those guidelines.

Actual sentencing experience will help the Commission determine whether it has identified the appropriate offense and offender characteristics, whether additional factors need to be included in a guideline, whether those factors now provided are appropriately weighted, etc.

Based on our experience to date, we know that these tasks will entail substantial expense. Yet, because we are still a relatively new agency with a changing, multi-faceted mission, it is difficult to project with precision the Commission's financial needs. Working with the Administrative Office of the U.S. Courts, we have submitted an FY 1988 appropriations request of $5.6 million, which is a decrease of $200 thousand from the current fiscal year appropriation. This lower appropriation request results from an available, unobligated balance of "no-year", start-up funds which the Commission is using to supplement newly appropriated funds for FY 1987 and FY 1988. The availability of these unobligated funds also made it unnecessary for the Commission to request any supplemental appropriations for FY 1987.

More precisely, at the end of FY 1986, the Commission had a balance of approximately $1.2 million in unobligated, "no year" funds remaining from its start-up appropriations. We project the allocation of $400 thousand of this $1.2 million for use in the current fiscal year in addition to the FY 1987 appropriation of $5.8 million, with the balance of $800 thousand to be used in FY 1988. Thus, the Commission's projected total expenditures for FY 1988 are $6.4 million, a $200 thousand increase from the $6.2 million estimate for FY 1987.

This FY 1988 budget request is designed to accommodate salaries and expenses for 54 full-time, permanent staff positions, the same authorization as for the current fiscal year.

Within this ceiling, the Commission expects that there may be some shifting of needs among research, legal and administrative personnel as its mission evolves.

The Commission's FY 1988 budget request is allocated among expense categories and activities in essentially the same manner as the current fiscal year budget, with small inflation-allowance increases. Although, as I have explained, the Commission's activities can be expected to change somewhat after the initial guidelines become effective, it is premature to conclude that the future budgetary requirements of the Commission will decrease. The tasks of field testing, and of designing and conducting educational programs for prosecuting and defense attorneys and court personnel, are expected to require substantial expenditures of Commission funds in the next budget cycle. Additionally, monitoring the operation of the guidelines, so that the information gathered and analyzed can be used to refine and improve the system, will involve significant research expenditures.

In summary, during the next fiscal year, the Commission expects to turn its attention to longer-range research and educational responsibilities outlined by statute. At the same time, the Commission will continue to focus heavily on the ongoing, evolutionary task of developing sentencing guidelines that will bring greater certainty and fairness to our federal criminal justice system.

Mr. Chairman and members of the Committee, I appreciate this opportunity to report on the activities, plans and budget requirements of the U.S. Sentencing Commission, and I will be pleased to respond to any questions the Committee may have.

FURTHER WORK OF COMMISSION

Senator Bumpers. Judge, isn't the lion's share of your work done?

Judge Wilkins. No, sir, I don't think so. I think the intensity of the work has been completed with the submission of the guidelines, but I see, over the next two years, continuing efforts to refine these guidelines, because I don't think we hit it right in every case, and I am sure we have got some mistakes and problems that we will need to clarify.

In fact, we envision, with this field testing operation, submitting to the Congress the first of next year a series of amendments which would then promptly take effect to correct any problems that we have discovered from experience through this field testing.

Senator Bumpers. Incidentally, this Commission is not suggesting that these guidelines at some point be codified, or are they?

Judge Wilkins. We are not suggesting that at this point. The Constitutional issue is still nagging us and, I am sure, the Congress.

It would be one method to remove some possible constitutional attacks on these guidelines.

Senator Bumpers. What if a judge elects not to use your guidelines?

Judge Wilkins. And sentences above the guidelines, for example?

Senator Bumpers. Yes.

Judge Wilkins. If the sentence is above the guidelines, the defendant has the right to appeal. The U.S. Attorney with the permission of the Attorney General or the Solicitor General, may appeal if it is below the guidelines.

So I think through that appellate process, which for the first time in our system, permits appellate review of sentencing, will force a certain adherence to the guidelines. I think judges will, by and large, attempt to comply with the guidelines, knowing that the appellate court has the authority to remand for resentencing if justifiable reasons did not exist for departure from the guideline.

COMMENTS ON GUIDELINES

Senator Bumpers. Who was the member who voted no on these guidelines?

Judge Wilkins. Commissioner Paul Robinson.

Senator Bumpers. What was his principal objection? Did he have some philosophical difference or what?

Judge Wilkins. He has submitted a dissent that we published and submitted to the Congress along with the guidelines. Wherever the guidelines are distributed, we distributed his dissent, so that everybody would have the benefit of all views. I hate to have to summarize Professor Robinson's views, but by and large, he would envision a system that I would say, in a sense, is more comprehensive than the one that we submitted. We did work on his vision of guidelines for several months, and we simply got no consensus of approval by the Commission.

He has a lot to offer with the guideline-writing process, but in my view and that of the other members of the Commission, we felt that we should tread somewhat cautiously in this first submission of guidelines. This is a major step in changing the way business is done in our Federal criminal courts.

Senator BUMPERS. This is a very laudible and admirable undertaking. I have recommended it for years. Obviously, you did circulate this for comment upon the judges in the country.

Judge WILKINS. Yes, sir. In fact, in each stage, we circulated the earlier drafts starting back in September. We received comment and used that comment to produce the next draft, which we would circulate, and we published them all in the Federal Register. We had wide circulation, and we mailed out, ourselves, over 6,000 copies of each draft to individuals who have expressed an interest in our work. Every judge received a copy of each draft.

EFFECT OF GUIDELINES

Senator BUMPERS. One of the things that worries me is you are talking about the Constitutional attack on a sentence. Let's assume that a guy in New York sells a gram of cocaine and it is the first offense and he is sentenced to two years. The guy in Arkansas commits the same first offense, and he is sentenced to ten years. Does he have a good case on appeal as a result of these guidelines?

Judge WILKINS. The Arkansas defendant?

Senator BUMPERS. Yes.

Judge WILKINS. Yes, sir, such a sentence would certainly appear to be above the guidelines; a ten-year sentence for one gram would be far in excess of the guidelines. Thus, unless the judge can point to a factor or factors in his case that the Sentencing Commission did not consider in drafting the guidelines for that offense which would justify such a sentence, the appellate court would have to find it unreasonable and remand for resentencing.

Senator BUMPERS. Or justify that kind of excessive sentence.

Judge WILKINS. The law is pretty clear: The sentencing court's decision should remain within the guideline, unless there is sufficient reason justifying departure, and departures are subject to appellate review.

Senator BUMPERS. That is not existing law. You just talk about the guidelines.

Judge WILKINS. And the statute, the enabling legislation that created us, provides for this process.

Senator BUMPERS. What does the enabling legislation say about that? I mean, the enabling legislation set up the Commission.

Judge WILKINS. Right.

Senator BUMPERS. And instructed it to draft these guidelines. Did it say anything more than that?

Judge WILKINS. It said a great deal more as far as appellate review is concerned. It stated that once the guidelines go into effect, then appellate review of sentencing becomes a reality, and it provides that if there is any direct misapplication of the guidelines, then the defendant or the U. S. Attorney may appeal.

If there is a sentence above the guidelines, the defendant has an automatic right to appeal. If it is below the guidelines, the U. S. Attorney, with the approval of the Attorney General or Solicitor General, may appeal. The basis on which an appellate court would reverse is to look at the facts of the case and look at the guidelines. If there was not a justifiable reason for deviation from the guidelines, then a case would be remanded with instructions to sentence within the guideline range.

Senator BUMPERS. Have you generally gotten good marks from the Judiciary on these guidelines?

Judge WILKINS. It depends on the individual judge. We have not had groups of judges meeting to approve or disapprove, although we did have several working groups of judges come in to our offices to advise and assist us. I will say this, Senator: I think you will find a great deal of resistance within the Judiciary to any guideline system. I think all my fellow judges believe like I do that we should have more uniformity in sentencing, but most of us believe that other judges should sentence more like ourselves. So we kind of take that approach, that "I am right and other people should follow my lead."

I do think judges who have seriously analyzed this work (and, indeed, many have been working with us), believe that it is certainly a step in the right direction. I think any time we have change—and this is a drastic change—there is a reason for it and there is resistance to it. I think, overall, the objective we have finally come to understand is that this hopefully will be an improvement over the existing system.

COMMISSION STAFF

Senator BUMPERS. Judge, do you need 54 employees? You have got a lot of vacancies now. Why do you need to continue with 54 positions?

Judge WILKINS. We have about, what is it, 33 staff positions now, John? We have not filled any positions over the last three or four months for several reasons. One, we have been so involved in this drafting process, we haven't had time to really concentrate on personnel matters. But more importantly, we didn't want to bring people in who had not been a part of the process over the last 12 to 18 months. We also borrowed staff with particular areas of expertise from the Justice Department and other sources.

It is difficult to inject somebody into the system in the middle of a complex task and expect them to be productive. We are interviewing now extensively, trying to find some lawyers and research people that we can use to fill these positions. I don't know that we will ever fill all 54 positions, but we intend to hire, if allowed, eight or ten people just as soon as we can. Of course, the 54 positions also include the seven voting Commissioners. That leaves 47 staff positions.

Senator BUMPERS. What is the total request for the Commission? Do you know what that is offhand?

Judge WILKINS. Yes, sir, $5.6 million.

Senator BUMPERS. But you also request almost $2.5 million for other services other than just paid staff. Describe those other services.

Judge WILKINS. As we projected this out, what we envisioned, and I mentioned it earlier, is this very extensive training effort and data collection operation that the statute requires us to do. The data collection is going to require a lot of sophisticated computer operations. We are going to have to hire some research people who can help put all this data together.

Senator BUMPERS. Is this a monitoring process?

Judge WILKINS. Yes, sir, this is the monitoring process I was speaking of and there is also the training. These are the two major phases of our work, beginning as soon as these guidelines go into effect, and the date is November 1st of this year.

Now, I, frankly, can't envision us spending $2.4 million on this, but I don't know where to say how much less of that that we should ask. I think as we move a little closer to this, we will have a better idea. I will certainly be glad to communicate with your staff to later suggest if there could be a reduction there.

We have tried to estimate budget needs as best we can. All of this budget process with a brand new agency and a brand new mission with no precedent to draw on has been difficult to predict. We have tried to be conservative in the expenditure of money, and as a result of that, we have $1.2 million of this unobligated money from prior appropriations that we are requesting be moved into this year and next year to reduce the total budget.

CARRYOVER TO FISCAL 1988

Senator BUMPERS. Is there a possibility that your projection of $800,000 in carryover will be more than that?

Judge WILKINS. I don't believe it would, do you think, John, be more than $800,000?

Mr. STEER. Yes, possibly. We are spending right now at a rate which could produce a larger carryover.

Senator BUMPERS. It could be more than $800,000?

Mr. STEER. It could be.

Senator BUMPERS. We hope it will be. I am not suggesting you dampen your enthusiasm or thwart the effort of what we are trying to accomplish here. The budget constraints around here are pretty dramatic. Any help you can give us on that will be most appreciative.

Judge WILKINS. I think we will probably be able to.

Senator BUMPERS. Judge, that is a very good statement. That is very helpful. I have talked to a couple of judges in my home state who applaud your efforts to have some concerns and some questions about it. I am sorry that I didn't talk to them yesterday. What they have said to me has been rather informal. They generally applaud the work of the Commission, though. I think you will have new bugs in it, obviously, that are going to have to be worked out.

Judge WILKINS. Right.

Senator BUMPERS. Judge, thank you very much. We have some additional questions for response in the record.

Judge WILKINS. Thank you, Mr. Chairman.

Senator BUMPERS. I have to go to another hearing. Senator Hatfield is on his way to hear the request of the Bicentennial Commission and the subcommittee will stand in recess until he arrives.

SUBMITTED QUESTIONS

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Question. How is the Commission organized?

Answer. The U.S. Sentencing Commission consists of seven voting members and two ex-officio members (the Chairman of the U.S. Parole Commission and the designee of the Attorney General of the United States). The staff is headed by a staff executive director who is responsible directly to the Commission. As a result of recent action by the Commission, the staff is organized into a research section, headed by a research director; a legal section, headed by a general counsel; a guideline production section, headed by a chief counsel; and a personnel and administration section, headed by a director for those purposes. Each of these sections reports to the Commission through the staff director. Additional staff provide support services for all the functional sections, for individual Commissioners, and for the Commission as a whole.

Question. Why does the Commission now have many vacant positions?

Answer. As I partially explained in my oral testimony, a number of persons who provided "staff" assistance to the Commission during the process of developing the initial sentencing guidelines were on loan to the Commission from the Justice Department and other sources. With the submission of the initial guidelines to Congress, these persons have returned to their "permanent" agency homes. Additionally, several other former staff members have accepted other, more attractive (with higher pay and/or enhanced responsibilities) employment opportunities elsewhere, and several have moved from the area. The concentrated focus of the Commission on guidelines development in order to meet the April 13, 1987, statutory deadline and the reluctance to inject new staff into this complex, intensive process resulted in the postponement of most staff replenishment until recently. The Commission is currently actively considering candidates to augment its legal, research, and administrative support staffs.

Question. Is it still anticipated that the guidelines will go into effect in November?

Answer. Under current law, that will be the case unless legislation is enacted to change that result. When the Commission submitted the initial guidelines on April 13, it proposed that Congress consider the need for a short stay of implementation after the guidelines otherwise become effective on November 1. The purposes of such a stay would be to permit training, guideline testing, and submission of amendments to the guidelines early next year as necessary to correct problem areas which surface in the training and testing process.

Although a number of groups, including several federal judicial circuits, have endorsed the concept of a stay of implementation, others, such as the Department of Justice, have either expressed opposition or downplayed the need for a delay. The Commission is proceeding with its clinical testing programs and with the development of training materials, in conjunction with the Federal Judicial Center, on the assumption that the guidelines will take effect on November 1.

Question. How will the judges' use of the guidelines be monitored?

Answer. The Commission's organic statute requires that the Commission monitor and evaluate sentencing under the guidelines for the purpose of modifying and updating the guidelines periodically. See 28 U.S.C. §§ 994(w), 995(a)(8), (9), (15). It is expected that the Commission will collect and analyze relevant information on each sentence imposed under the guidelines. Probation officers who now complete the presentence investigation reports and FPSSIS (Federal Probation Sentencing and Supervision Information System) reports, will be responsible for furnishing this sentencing data to the Commission. In conjunction with the Administrative Office of the U.S. Courts and the Probation Committee of the Judicial Conference, the Commission is developing plans for carrying out this monitoring effort in the most efficient manner.

Question. The Commission plans to spend more for other services than it does for the compensation of its own staff. Please supply the basis of the $2,425,000 requested for other services?

Answer. As I briefly explained in my oral statement, the $2.4 million of our FY 1988 budget request generally earmarked for "other services" is an estimate of what may be needed to cover the cost of training, field testing of the guidelines, data collection and analysis. Since these functions have never been undertaken before at the federal level, it is difficult to predict the cost. The Commission will do its best to accomplish these tasks within the budget request, and may be able to do so at less expense than projected. The Commission has recently approved the expenditure of up to $868,000 to reimburse the Federal Judicial Center for the cost of assisting the Commission in developing and implementing training programs and materials on the operation of the sentencing guidelines. These programs and materials will be prepared for federal judges and probation officers. The majority of these funds will be used to pay for travel and related expenses for judges and probation officers who participate in regional training programs.

I should also add that the "other services" portion of the Commission's budget includes essentially all contract services, including consultants. The Commission has employed (either presently or in the past) consultants to assist in assessing the impact of the guidelines on the federal prison system, to advise the Commission in its development of the guidelines, and to evaluate its research methodology. Consultants may be retained in the future as necessary to assist the Commission in carrying out its evolving functions.

QUESTIONS SUBMITTED BY SENATOR MARK HATFIELD

Question. This Committee has expressed concern in the past about the impacts of federal sentencing guidelines on the federal prison system; yet, the April 13, 1987 "sentencing guidelines and policy statements" do not appear to address this critical question. Please explain why this matter was omitted from the report and explain, at this time, what those impacts on the prison system might be.

Answer. Prison impact was considered in drafting the initial sentencing guidelines, but the Commission did not treat current prison capacity as an absolute constraint on its decisions. Instead, it tried to promulgate guidelines which are appropriate to the seriousness of the offense and the relevant characteristics of the offender; i.e., guidelines which are just, fair, and effective. Overall, the guidelines are expected to cause a modest increase in prison population of approximately six to seven percent over the next five years. A more detailed discussion of prison impact is contained in the Commission's Supplemental Report, which will shortly be provided to each Member of Congress.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

BIENNIAL BUDGET CYCLE

Question. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

Answer. The U.S. Sentencing Commission would have no objection to a biennial budget process. Our principal concern would be the difficulty of projecting our budget needs that far in advance. We are a new federal agency engaged in performing an evolving mission in uncharted territory. Thus, we have found it somewhat difficult, at these early stages of our agency history, to predict budget needs with reasonable accuracy on even a one-year cycle. However, as the functions and needs of the Commission stabilize in the next few years, there should be no insurmountable obstacle to budgeting on a two-year cycle. The annual appropriations process consumes valuable time of staff and Commissioners in preparing the budget and requesting appropriations from Congress--time which could be spent on other tasks if the process were a biennial one. Also, a two-year cycle might have the effect of enforcing additional fiscal discipline (although this particular agency has thus far consistently spent less money than appropriated for it).

Question. Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission?

Answer. This is only the third appropriation cycle for the Commission, so it is difficult to judge what proportion of our appropriation request is routinely repetitious of the previous year's submission. In the future, as its mission and budget needs become more stable and predictable, I expect that a fairly high percentage of the budget will be repetitious.

Question. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

Answer. As I indicated in response to the first question, it is difficult for a new agency with a new and changing functional mandate to budget even on a one-year cycle. However, time and experience should enable this Commission to more reliably predict its budgetary needs, including its needs over a two-year cycle.

Question. Would you expect to realize any budget savings if you could plan your agency budget on a two-year basis? If so, could you estimate how much?

Answer. I could not at this time predict how much, if any, savings would result from a two-year budget process.

Question. If you oppose the biennial budget concept, please give this subcommittee your reasons why.

Answer. I support the concept.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

STATEMENT OF HON. CHIEF JUSTICE WARREN E. BURGER, CHAIRMAN, COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

ACCOMPANIED BY MARK W. CANNON, STAFF DIRECTOR

Senator **Hatfield** [presiding]. The subcommittee will come to order. Good morning.

Chief Justice **Burger**. Good morning, again, Senator.

Senator **Hatfield**. Good morning, Chief Justice.

Chief Justice **Burger**. Your time is just like mine.

Senator **Hatfield**. Mr. Chief Justice, it is a great pleasure for me to welcome you on behalf of our Subcommittee. Our chairman, Senator Hollings, is, like all of us here, overly committed to many duties in the Senate and was not able to be here. I benefit by that fact, and also am happy to help our Subcommittee chairman out any way I can to share the burden that he carries.

Also, Senator Stennis wanted me to be very specific in saying to you that his schedule was also inhibited this morning and prevented him from being here, but that he wanted in no way to indicate any lessening of his interest in this program that you are representing, that is, the Commission on the Bicentennial of the U. S. Constitution.

PREPARED STATEMENT OF MARK CANNON

We do have, Mr. Chief Justice, a formal statement from Mr. Cannon, which will be printed in full in the record.

[The statement follows:]

COMMISSION ON THE BICENTENNIAL OF THE U.S. CONSTITUTION

STATEMENT OF THE STAFF DIRECTOR

MARK W. CANNON

Two centuries ago, far-sighted statesmen achieved a new form of government that guaranteed freedom and fostered creativity.

Today, most of you in Congress, like many officials in the other branches of government, are committed to commemorating the creation of the world's first large Constitutional Republic. As Thomas Jefferson said: "We can no longer say there is nothing new under the sun; for this whole chapter of the history of man is new." This Bicentennial provides a special opportunity for all Americans to reflect on the freedom that we have enjoyed and to renew our commitment to the Constitutional system that has given it meaning and life.

As described by Chief Justice Warren E. Burger, the Commission's goal is "a history and civics lesson for all of us." The Commission was not charged by Congress with promoting a primarily festive celebration. Rather, the Commission was required to take a different direction, predicated upon the fundamental notion that the citizens are the basic components of power under our Constitution and that their understanding of the Constitution is essential to the health of our Republic. As set forth in Public Law 98-101, the Commission is specifically required to "plan and develop activities" which further "the important goals of scholarship and education"; to "encourage private organizations, and State and local governments" to develop Bicentennial activities; to "coordinate, generally, activities throughout all of the States"; and to "serve as a clearinghouse" for information on Bicentennial plans and activities.

Congressional appropriations provided last fiscal year have permitted us to establish an organization, plan and launch major projects, and stimulate widespread citizen involvement in a short time in pursuit of these objectives.

The Commission has announced as the commemorative theme for 1987 the writing of the Constitution; for 1988, the ratification and debate over the Constitution; and for 1989, the establishment of the Government by the First Congress. Congress has extended the life of the Commission through 1991 to add the writing and ratification of the Bill of Rights. Chairman Burger plans an additional emphasis during 1988, 1989, and 1990 on the creation, development and needs of each of the three branches of government under the Constitution: Article I, the Congress; Article II, the Presidency; and Article III, the Judiciary. The Commission's special recognition of the Congress in 1988 will help set the stage for Congress' commemoration of its own 200th anniversary in 1989.

We hope to stimulate widespread discussion of such questions as: What are the historical and intellectual origins of the Constitution? In what ways was the Constitution a major break with the past? What problems and benefits have flowed from the system of freedom and the cascading release of creative energy established by the Constitution? What factors have caused the Constitution uniquely to endure two centuries? Since throughout history freedom has been fragile and often temporary, what are the conditions most likely to sustain American Constitutional freedom in the coming centuries?

A recent poll by the Hearst Corporation disclosed a widespread ignorance about the Constitution. Barely a majority of the American people know that the purpose of the 200-year-old document was to create a Federal government and define its powers. Sixty percent believe that the President, acting alone, can appoint a Supreme Court Justice. And nearly half of those polled believed that the Constitution contains the Marxist declaration "from each according to his ability, to each according to his needs."

The Commission has moved rapidly to sponsor or cosponsor such programs as the massive distribution of copies of the Constitution, already approaching 1 million; distribution of more than 300,000 posters of the Christy painting depicting the signing of the Constitution; dissemination of 300,000 1987 Bicentennial calendars that chronicle the daily events of two centuries ago; a Constitutional theme for Disney World's 15th Anniversary celebration; the commemorative planting of trees in our Living Legacy Project; provocative Ad Council public service announcements highlighting rights guaranteed by the Constitution; a Constitutional teach-in to be held on September 16, 1987; a touring museum and scholarly symposia on the Northwest Ordinance; a joint statement from the Democratic and Republican national chairmen; commemoration of the Annapolis Convention; establishment of a non-profit foundation to assist in fund-raising; acquisition of the Jean de Crevecoeur manuscripts of Letters From an American Farmer; a touring exhibit of the Magna Carta, the Constitution and other historical documents; the National Bicentennial Competition on the Constitution and the Bill of Rights, based on a six-week study unit on the Constitution; high school and law school essay contests; the James Madison Fellowship Program; grants for the development of teaching materials and training of teachers; and a computerized clearinghouse of Bicentennial projects nationwide.

In its energetic "outreach" program, Commission efforts have stimulated the development of Bicentennial projects by 100 Federal agencies, the creation of Bicentennial commissions and programs in 49 States and over 1,000 communities, programs by hundreds of educational institutions, dozens of planned media events, and several hundred projects sponsored by private organizations. The Commission has granted official recognition or encouragement to 124 of these projects.

In addition to programs with which the Commission is directly involved, numerous independent projects have been stimulated by the atmosphere of involvement generated by Commission activity.

Let me elaborate on some of the Commission projects.

Constitutions. Working with the National Archives and the Library of Congress, the Commission developed an authoritative, pocket-sized edition of the Constitution. The first printing was 387,000 copies, and a second printing yielded an additional 1.3 million copies. The Commission is distributing these popular booklets at an increasing rate of 175,000 per month. In addition, Phillips Petroleum Company has produced 1.5 million copies of a booklet featuring the Declaration of Independence and the Constitution. Between June and September Citicorp/Citibank plans to produce and distribute free of charge 500,000 copies of a pocket-sized Constitution.

Poster Projects. The Commission and West Publishing Company cosponsored a new painting by Alton Tobey depicting the signing of the Constitution. West has published this as a poster and distributed it to 25,000 high schools and other institutions. Sixty-eight thousand posters of the Howard Chandler Christy painting of the Signing, as well as numerous other posters, have been produced and distributed with the assistance of private industry.

Bicentennial Calendar. The Commission's 1987 calendar includes a daily chronicle of historical events of 200 years ago. The calendar, over 300,000 of which have been printed, has been widely distributed to radio and television stations, newspapers, State and community Bicentennial commissions, the Congress, teachers, and other groups promoting Bicentennial activities. A reference to the calendar in a *New York Times* article attracted more than 3,000 letters requesting over 50,000 copies. For 1988 we have designed a 16-month calendar beginning with the month of September, 1987, and including Bicentennial events through 1988.

Disney World. Illustrative of our outreach efforts to involve as many organizations as possible in the Constitution's Bicentennial, Disney World agreed to incorporate a Constitutional theme in its 15th Anniversary celebration. Negotiations ensured a tasteful program with educational dimensions. As a result, an eye-catching exhibit of items from the Founding period now greets millions of visitors to the American Adventure Showcase in Epcot Center. Disney President Frank Wells and Chief Justice Warren Burger spoke on the Constitution to more than 5,000 journalists. They were followed by a surprise visitor, Nicholas Danilov, who explained in poignant terms the differences between those protections ensured by our Constitution and "protections" he had recently received in a Soviet prison. More than 1,100 media stories appeared as a result of this event, including a national ABC-TV feature with Senator Edward Kennedy and Chief Justice Burger. The Disney Channel plans to produce follow-up shows on the Bicentennial.

Planting a Living Legacy. The Living Legacy Project commemorates the Constitution as an enduring document by encouraging the planting of trees to be maintained in perpetuity. On September 17, 1986, following remarks by Lady Bird Johnson and other dignitaries, President Reagan officially dedicated Constitution Gardens on the Washington Mall as the first Living Legacy. We have received over 400,000 requests from organizations for information on the project and have produced a "how-to" booklet.

Ad Council. The Commission encouraged the Advertising Council to commemorate the Bicentennial through public service announcements. The Council chose a fast-growing New York firm -- Scali, McCabe, and Sloves -- to meet the challenge of conveying significant implications of the Constitution through concise, thought-provoking public service announcements. After considerable effort, a series of excellent announcements were premiered at the National Press Club on Monday, February 23, almost 200 years to the date that the Constitutional Convention was called by the Continental Congress in 1787. More than $25 million of free coverage is expected with these announcements which invite viewers to learn more by writing "CONSTITUTION, WASHINGTON, D.C. 20599." We anticipate requests for information numbering in the hundreds of thousands and, accordingly, we are making the necessary plans.

Celebration of Citizenship. On September 16, 1987, the youth of America will lead our entire nation in a special tribute to the Constitution. Over 105,000 schools have been sent educational materials to be used in developing a day-long teach-in. Plans are being made for a live radio and television broadcast from Washington, D.C. that would enable all citizens--both at home and abroad--to participate in a patriotic salute to our Constitution. President Reagan has been invited to lead Americans in the Pledge of Allegiance, and Chief Justice Burger will read the Preamble to the Constitution. The Commission is cosponsoring this project with the American Newspaper Publishers Association and major national educational organizations.

Northwest Ordinance. Few Americans understand the critical role of the Northwest Ordinance of July 1787 in creating our Constitution. The agreement of the states to relinquish claims to the Northwest territory permitted the Constitution to be framed with a clear method for the entry of new states into the union. The strong emphasis in the Northwest ordinance on education and civic virtue was recognized by the Founders as seminal to the success of the new Republic.

The Commission is cosponsoring with the Big Ten University Alumni Association an educational effort to exhibit and explain the documents related to the Northwest Ordinance. The two-phase project would include a traveling museum within the area of the Old Northwest and a series of scholarly symposia on the Northwest Ordinance at participating universities. The project will cost approximately $1.4 - $1.5 million, funded largely by the universities, the Alumni Association, and private sources. Nearly $500,000 has already been raised or committed.

Annapolis Convention. The Commission and the Maryland State Commission sponsored a series of programs in Annapolis last October highlighting that city's role in the creation of the Constitution. The inadequacies of the Articles of Confederation became a major issue in Annapolis, resulting in a later convention in Philadelphia to make improvements on that first national charter.

One hundred thousand copies of a newspaper explaining the Annapolis Convention -- what it accomplished, what it failed to accomplish, and how it set the stage for the Philadelphia Convention -- were mailed to schools and to State and local Bicentennial commissions throughout the country.

The Foundation for the Commemoration of the United States Constitution. This non-profit foundation has been created to assist in fund-raising for projects supported by the Commission. The Foundation is chaired by Dwayne Andreas, Chairman of Archer Daniels Midland Company. John Meyers, former Chairman of Publications for Time,Inc., serves as President.

Crevecoeur Manuscripts. The Commission cosponsored the acquisition of the Jean de Crevecoeur manuscripts including the *Letters from an American Farmer* and 23 other essays and letters. These interesting observations on our founding period--from an American farmer with a French perspective--were donated to the Library of

Congress. The funding came from a grant of the Morris and Gwendolyn Cafritz Foundation for the Commemoration of the United States Constitution.

Roads to Liberty. The Commission is cosponsoring with the Constitutional Council of the Thirteen Original States and American Express Company a tractor-trailer exhibit of Constitution-related documents to tour 26 states. The documents include an original Magna Carta from Lincoln Cathedral in Great Britain as well as replicas and/or originals of the Mayflower Compact and other documents that influenced the Constitution. The exhibit began at the White House March 11 and is currently touring the Southeast. The exhibit will return to Washington for display at the Capitol June 1 and 2 before departing the District June 6 for a tour of the original thirteen States, ending just prior to the Philadelphia Convention commemoration on September 17.

The National Bicentennial Competition on the Constitution and the Bill of Rights. We anticipate an educational revolution as a result of encouraging long-term Constitution-related studies. One of these, which your Committee and the Congress has endorsed, is the National Bicentennial Competition based on the **Center for Civic Education**'s six-week unit on the Constitution for eleventh-grade civics classes. (It may be used for the tenth through twelfth grades.) This competition, which focuses on the principles, structure and development of the Constitution and Bill of Rights, uses the incentives of a national quiz and oral competition to generate enthusiasm for studying. Classes compete at the Congressional district, State, and national levels. The curriculum has been field tested in 300 classrooms nationwide (12,000 students in 22 states). Interestingly, in the first experiment a class deemed well below grade level in English language proficiency won the competition. New six-week units will be prepared for eighth- and fifth-grade levels. Potentially, more than 10 million students could participate in the program during the next decade.

With your endorsement and appropriation, the Commission has authorized a grant of $2.7 million to the Center for Civic Education to direct this educational and competitive project. Information is being widely disseminated in preparation for the nationwide launching in September.

The High School Writing Competition. Cosponsored by the Commission, ***USA Today*/Gannett Company**, and the American Bar Association, this competition offers a $10,000 first prize to the high school student who writes the best essay on: "The Constitution: How Does the Separation of Powers Help Make It Work?"

In May and June, 1986, Chairman Burger sent 60,000 letters to high school principals around the country encouraging participation. The Commission's Education Division and *USA Today* promoted the contest through full-page newspaper ads; television and radio spots on Gannett-owned stations; news releases to national and State educational journals; 75,000 copies of a poster depicting the separation of powers; billboard ads near school traffic routes; and half a million 24-page "Freedom Guides" with engaging news stories about the Constitutional Convention as well as Constitutional issues.

More than 350,000 entry forms were circulated through various channels, with over 14,000 essays finally submitted to the Commission. The panel of judges -- representing law and social studies -- were selected by State coordinators who, in general, were selected by the State Chief Justices.

Essay Contests. Many other organizations, from the **Daughters of the American Revolution** to the **National Society of Hebrew Day Schools** to the **United States Department of Education**, are sponsoring similar essay contests for young people.

At the college and university level, law schools are involved in essay contests through a project cosponsored by the Commission and **West Publishing Company**. Essays will address the question: "Does the Allocation of Power Between Federal and State Governments and Among the Three Branches of the Federal Government Contribute to the Preservation of Individual Liberty and the Functioning of Our Government?" Again, first prize has been set at $10,000 with the same deadline as for the High School Competition.

The James Madison Memorial Fellowship Program. This program, initiated by Senator Edward M. Kennedy and supported by the Commission as a whole, was established by an act of Congress to encourage outstanding teachers to earn Masters degrees focusing on the history, principles, and development of the Constitution. An independent foundation within the Executive Branch will ultimately award the fellowships from the interest of a Fellowship Trust Fund, which will receive $20 million from Congressional appropriations. A matching $10 million will be sought from private sources.

Educational Grants. With your appropriation of $1 million, the Commission has established a grants program for elementary and secondary schools, including the establishment of teacher institutes and the development of curricular materials. We received 222 applications from 46 states, the District of Columbia, and the territories. Although grant proposals were limited to a maximum of $75,000, the total amount requested was nine times as much as our available money. Next year, with more lead time, an even greater response is expected.

Organization of the Commission

People benefit most from programs that require their first-hand participation in planning and preparation. Furthermore, participation by numerous groups in varied ways reflects the essence of our American invention -- that the Constitution, government and national policies derive from WE THE PEOPLE.

Thus our organization is designed to spearhead, stimulate, promote and encourage thought and action by a multiplicity of groups -- most of whom were unaware of the Bicentennial when we started. This has been accomplished through hundreds of thousands of phone calls, letters, brochures, information packets, speeches and meetings. Demand for our services intensified following the Chief Justice's highly publicized retirement and shift to full-time service as Chairman of the Bicentennial Commission last June.

Let me give some examples of the impact of these outreach efforts. Catherine Drinker Bowen's well-regarded narration of the Constitutional Convention, *Miracle at Philadelphia,* had long been out of print. Chairman Burger phoned the president of Little, Brown and Company and urged him to republish it. Company executives reviewed the matter and agreed to do so. For the first time in its history, the Book of the Month Club chose a book for a second time. Even though it was not published until November, 1986, its sales of 120,000 copies still exceeded any of the Club's other 300 offerings of 1986. An additional 58,000 copies have been sold by the publishers. With our encouragement, such other books on the Constitution, as *Decision at Philadelphia,* have been published in both hard and paperback editions.

Commission outreach continued during Riggs Bank's 150th anniversary celebration, as Chairman Joe L. Allbritton enthusiastically accepted our invitation to donate for one year 14,500 square feet of downtown Washington office space for use by the Commission.

Our outreach Divisions, including Federal and International, State and Local, Marketing and Private Sector, Education, Communications, and a walk-in Information Center, tailor their approaches to the particular natures of individual groups.

Private Programs and Marketing Division. The task of stimulating interest among private sector organizations has fallen mainly to the Private Programs Division of the Commission. Its approach has been to establish contacts with as many organizations as possible across the nation in an effort to reach every American with the Bicentennial story. Outreach targets include senior citizens, the handicapped, ethnic groups, youth organizations, religious groups, sports groups, labor unions, airlines, hotels/motels, trade associations and businesses.

The Commission has been in communication with more than 2,000 organizations initiating Bicentennial projects, and hundreds have committed themselves to specific programs. The volume of inquiries by groups interested in participating in the commemoration is increasing. As I indicated earlier, the responses have been cumulative and varied.

After several meetings and exchanges of information, the Commission officially recognized an elaborate five-year educational project of the Scottish Rite of Freemasonry entitled "The Keystone of Liberty." The project includes the publication of special issues of the organization's national magazine dedicated to the Bicentennial. Notably, this is the first time in the group's history that the northern and southern jurisdictions have agreed to sponsor an activity jointly.

The Commission also encourages volunteer agencies to join the celebration. VOLUNTEER, THE NATIONAL CENTER and the Commission agreed to a joint celebration of National Volunteer Week (April 26 through May 2, 1987), recognizing that "We the People" not only control our government but also solve problems through volunteer action.

Several major sports organizations are now involved. The national associations of football, baseball, and basketball are planning Bicentennial activities. For example, the San Diego Chargers of the National Football League agreed to dedicate two August pre-season football games to the Bicentennial, with colorful pre-game and halftime shows celebrating the Constitution. Another project will display Bicentennial messages on electronic scoreboards in stadiums across the country. In addition to involvement by professional sports teams, the NCAA plans extensive activities throughout its collegiate network.

Historically, the Constitution has affected the lives of Americans of different ethnic backgrounds. Several ethnic groups have expressed a strong interest in participating in the Bicentennial. The Commission has officially recognized a project by American Indians to analyze the influence of the Iroquois nation and their tribal democracy on the ideas the Founding Fathers brought to the Constitution. Another project involving American Indians is a three-day international symposium to address the fundamental relationship between native Americans and the United States Constitution. The project is entitled "In Search of a More Perfect Union: Native Americans and the Constitution."

Several Black American organizations have sought Commission endorsement of Bicentennial-related projects. The Schomburg Center for Research in Black Culture received recognition of its traveling exhibit highlighting the role of race in the development of the Constitution and subsequent developments in Constitutional law. The Commission has also encouraged a project submitted by "Say Thanks America," a multi-ethnic group of young people, to host an international birthday party dedicated to the Bicentennial. The "Say Thanks Kids" will perform a narrative on the importance of the Constitution and what it means to them.

The Commission also has recognized projects submitted by religious groups, such as the National Conference of Christians and Jews (NCCJ). The NCCJ is working across the country to encourage school children to "put their names on the line" by signing the Constitution. Sixteen thousand school districts nationwide have already received educational materials to help implement the program. Many other religious groups are currently planning programs. Chief Justice Burger recently sent letters to the leadership of major religious organizations and denominations urging their participation in a "Constitution Weekend" either directly prior to or following September 17.

Other outreach projects include the distribution of Braille Constitutions by the National Braille Press, Inc.; a massive media campaign by the American Hotel and Motel Association reminding the public of the relationship between the hotels and inns of America and significant events in the development of our country; and extensive activities planned by seven major airlines directed at both customers and employees.

The Marketing Division advises the Commission generally on methods of formulating and packaging informational materials and stimulating interest in the Constitution. The marketing strategy for the Commission is being developed through 1991.

In October, Congress authorized the Commission to license the logo for educational or commemorative products. Our marketing people have developed standards of quality and good taste and published regulations on commercial uses of the logo. We are accepting licensing applications.

Corporations' eleemosynary budgets are normally tiny compared to their marketing and advertising budgets. Still, we hope that, where appropriate, corporations will undertake projects that promote Constitutional education. For example, American Express Company is the primary sponsor of the touring exhibit of the Magna Carta and other documents of freedom. At least 30 major corporations have now launched national Bicentennial programs. Our marketing people are responsible for preparing packages on appropriate projects which will then be promoted among corporations by the Foundation for the commemoration of the United States Constitution already mentioned.

A much-appreciated example of private-sector support is our Director of Marketing and Private Programs, Terry Notari, a top marketing executive on loan to us from IBM.

The Commission has worked to encourage participation in the Bicentennial commemoration by both corporate America and other private organizations. The enthusiastic response has exceeded expectations.

Resource Center. The Commission established the Information Services function in response to thousands of inquiries from across the nation received daily by telephone, through the mail or through personal contact. The Information Center answers requests for educational materials, summaries of local and national Bicentennial activities, and information on publications and resources available both inside and outside the Commission. Our computer database enables us to satisfy many queries immediately over the phone as Commission operators retrieve information on individual monitor screens. Requests are processed and filled with information about the Constitution in the form of bibliographies, pocket-sized and parchment copies of the Constitution, calendars, posters, price lists for commemorative articles and audio-visual items, article reprints, quotations and speeches.

Education Division. Despite continuing poll evidence of ignorance about the Constitution, and despite State educational requirements, textbook coverage of the Federal Constitution is still meager. Hence, promoting education is the most vital challenge of the Bicentennial commemoration. More than 200 educational programs are underway, and many have been active more than six months. Unlike most previous commemorative efforts, many of these will endure long after the life of the Commission.

Improving curricula and engendering new classroom activities have high priority. Some projects, such as the Bicentennial Competition, the essay contests, the September 16 teach-in, and the James Madison Fellowship Program, are large-scale, Commission-sponsored programs.

We have initiated a program to establish Bicentennial Campuses at colleges and universities. This program engages the efforts of students, staff, and administrators in designing and promoting Constitution-related activities throughout the five-year commemorative period.

Other representative programs include the **American Legion's 50th Annual Oratorical Contest** on the duties and obligations of citizens under the Constitution. High school students compete with prepared speeches followed by extemporaneous deliveries on topics disclosed five minutes before the presentation.

The Center for the Study of the Constitution has launched a four-part Bicentennial program, "Our Peculiar Security: The Constitution and Limited Government," which combines lecture series, videotaped presentations, newspaper presentations, and a source book for teachers. The project emphasizes a government kept in check by internal structure as opposed to external checks.

The **Society for Visual Education** is producing a filmstrip on the Constitutional Convention for elementary-school youngsters. Some organizations, like the **Delaware Heritage Commission**, are preparing teaching units for the classroom while **The Federalist Society** is hosting educational symposia on the Constitution. The **Yale Center for Parliamentary History** is preparing papers which address the influence of the Stuart era on the Founding Fathers. Many colleges and universities are taking up the challenge with everything from **Carleton College**'s innovative radio broadcasts, based on the correspondence and long personal relationship between Thomas Jefferson and John Adams, to **North Carolina State University**'s videotape presentations on the proceedings of the Philadelphia Convention.

The foregoing is a representative list of educational programs. We anticipate additional positive results from the legislation which authorizes us to make educational grants to local educational agencies, schools, private oganizations and individuals for the development of instructional materials on the Constitution and the Bill of Rights.

State and Local Affairs Division. From May through September of 1987, the Town Crier of Winchester, New Hampshire--in colonial dress--will announce on Main Street, as well as in the elementary and high schools, the historical "news of the day." Following the announcement of the convening of the Constitutional Convention, daily "progress reports" will highlight the events of 1787, culminating on September 17 with the Signing of the Constitution.

Such hands-on participation in the Bicentennial at the grassroots level is vital to the success of this "history and civics lesson for ALL of us." The State and Local Affairs Division has successfully encouraged the formation of commissions in all but one state, while recognizing over 1,000 towns, cities and counties as "Designated Bicentennial Communities."

Philadelphia's commission, *We the People 200*, has planned many commemorative events, including a September 17 re-creation of the Grand Federal Procession and a re-dedication ceremony on Independence Mall. Representatives from Congress plan to travel to Philadelphia on July 16 to commemorate the "Connecticut Compromise" that structured the House and Senate.

St. Louis has adopted the Constitution as the theme of its July 4 Veiled Prophet Fair, expected to attract more than three million people.

The Virginia Court Days Forum has conducted a series of 20 sessions on Constitutional issues at historic courthouses, with panels of experts interacting with each other and members of the audience. Each forum is presented as an edited one-hour program on WCVE-TV in Richmond.

The celebration of the Constitution reflects the diversity of "We the People" in hundreds of towns and hamlets. McCall, Idaho, has designated a Constitutional Corner in its main park, installing a "Soap Box" for mock debates, oratory, and readings on the Constitution. Meanwhile, Molalla, Oregon, will promote a Bicentennial theme for its annual rodeo and parade.

The division's 100-page *Summary of State and Local Activities* and a monthly *Update* newsletter provide a forum through which communities such as Knoxville, Tennessee, share ideas, plans, expertise, and success. Knoxville's September 17 re-enactment of the Signing of the Constitution will be followed by a Bicentennial tree-planting at the Courthouse and colorful events.

The organizers of events in, for example, Walla Walla, Washington, can learn how best to promote and execute their series of Constitutional debates by attending one of seven Bicentennial Regional Training Conferences between February and May, 1987. These seminars are designed to recruit and train more than 1,000 local leaders, representing over 80 million constituents, in an effort to involve as many Americans as possible in the Bicentennial celebration.

Many local communities have planned an entire year of Bicentennial activities. Chincoteague, Virginia, commenced its year-long commemoration with an evening of patriotic songs, rededication to the flag and the Constitution, and an educational talk by a Commission staff member. A full calendar of events, including a Bicentennial play, musical, and educational programs are planned for the remainder of the Bicentennial period.

The State and Local Affairs Division has played a vital role in stimulating grassroots commemoration of the Bicentennial.

Federal Programs Division. The Federal Programs Division of the national Commission involves Federal agencies and departments in the commemoration. Chairman Burger sent an early letter to the heads of Federal government agencies and departments urging them to plan appropriate activities to mark the various milestones of the commemoration. Meetings were initiated by Commission staff to suggest strategies, to present historical background information, and to help the agencies cultivate cooperative ties with organizations outside of government to bring diversity and depth to project ideas. By November of 1986, twenty-seven specific programs had been planned by Federal agencies. Today, one hundred Federal agencies, employing 99.7 percent of Federal personnel, have committed to Bicentennial projects. Programs encompass a wide range of efforts including research, publications, scholarly projects, conferences, audio-visual programs and plays, exhibits and tours, contests, ceremonies and galas, lectures, school curricula, special services, distributions of Constitutions, commemorative products, posters, and special mailings. The Federal Division proposes programs, gathers materials, and advises Federal coordinators on a regular basis.

The **National Park Service**'s Bicentennial programs will be seen by the greatest number of people. Approximately 281 million attended the parks in 1986 alone.

The agency has designated the Constitution as its theme for 1987, and special activities include a series of Bicentennial slides for use in individual National Parks; a 25-minute musical, "Four Little Pages," which dramatizes the deep divisions among the 13 original states that led to the Constitutional Convention; the "Miracle at Philadelphia" exhibit, which features famous historical documents, at Independence National Historical Park in Philadelphia through September of 1987; a 18-minute video entitled "The Blessings of Liberty"; the *Daybook for 1787*, a day-by-day account of historical events surrounding the drafting of the Constitution, available to National Parks visitors and to the public through the Eastern National Park and Monument Association in Philadelphia.

The **National Archives**, home of the original Constitutional documents, has also committed to a great number of Bicentennial programs. On September 13 of this year, the National Archives will begin an 87-hour vigil to allow visitors all-day access to view the Constitution. Visitors will be able to sign a register and to receive a copy of the Constitution with the National Archives' seal while attending a variety of events ranging from concerts to dramatizations. Also planned by the National Archives is a three-part Bicentennial exhibit exploring the history of the Constitution; a monthly volunteer lecture series; a series of symposia and debates; a series of teacher workshops; a Constitutional Film Festival; biographical publications on the signers and others who were connected with the framing of the Constitution; and facsimile reproductions as well as pocket-sized versions of the Constitution.

Of the Federal agencies, the **Department of Defense** has developed the greatest number of programs, including a series of forty 60-second "Soldier-Statesmen" videotapes on the signers of the Constitution who were also Revolutionary War veterans. The Defense Department has also published a series of 23 six-page pamphlets on the same subject. The Department theme, "to provide for the common defense," will be reproduced on 5,000 commemorative medallions.

The **Department of Justice** is sponsoring a year-long lecture series, "The Founders and their Times." The **National Endowment for the Humanities** has funded over two hundred Constitution projects, including a "Bicentennial Bookshelf" program that offered matching grants to some 800 public libraries that created reference sections on the Constitution. The **Library of Congress** is displaying a major exhibit; the **U.S. Postal Service** is issuing commemorative stamps; the **Smithsonian Institution** is sponsoring an international symposium and a teachers' workshop; and the **National Trust for Historic Preservation** has formally opened James Madison's Virginia estate, Montpelier.

The **National Park Foundation** (NPF) intends to fill Federal Hall National Memorial in New York City with state-of-the-art interactive computers and other media to educate visitors about our constitutional system. The new Museum of American Constitutional Government will include a mixture of exhibits and other educational resources. To broaden further the Museum's appeal, the National Park Foundation will develop a mobile program based on the electronic format used by schools and communities throughout the country. Key aspects of the 1989 Bicentennial observance are tied closely to Federal Hall: the inauguration of President Washington, the swearing in of the first Supreme Court, the meeting of the first Congress, and the debate and passage of the Bill of Rights.

At the request of the Foundation, Senator Alfonse D'Amato secured a $900,000 congressional appropriation to repair and refurbish Federal Hall. The Benton Foundation has underwritten the cost of a detailed plan for one of the four main museum galleries. The National Park Service has endorsed the Foundation's placement of comprehensive visitor information in Federal Hall to promote the site as a focal point for visitors to Lower Manhattan. The Commission has granted a request for an official letter of encouragement.

These and other Federal agency programs serve to remind the American public of their long history of freedom under the United States Constitution.

International Programs.- The Bicentennial commemoration affords the opportunity to share principles of self-government with other nations through seminars, lectures, exhibits, and other means of interest to those both familiar and unfamiliar with democratic concepts.

The International Division of the national Commission works with and through such organizations as the United States Information Agency (USIA), the Department of State, and the USIA's Voice of America. The USIA schedules television interviews, informal discussions, and lecture tours for visiting Commissioners and other Constitutional experts traveling abroad. USIA has joined Commission efforts to promote constitutional conferences and symposia abroad, arranging for more than 200 experts to travel to foreign countries to participate in events related to the commemoration.

For example, Chief Justice Claudio Teehankee and Ambassador Emmanuel Pelaez of the **Philippines** are spearheading a three-day conference in commemoration of the American Constitution, to be held in Manila in 1988.

The American Chamber of Commerce in **Latin America** has launched writing contests similar to some of our own addressing the United States Constitution.

Vienna, Austria, and **West Germany** have honored the U.S. Constitution with a gift to the United States of an original composition by renowned composer Roland Baumgartner.

The Department of Commerce communicates the story of the Constitution through its Travel and Tourism Office, as well as through its regional posts abroad.

Communications Division.- The Communications Division is different from other Commission divisions in that its function is more to publicize than to generate Bicentennial projects, events and programs. Its role is to communicate Commission activities and to create enthusiasm for and interest in the Bicentennial of the Constitution through the nation's print and electronic media. The division also serves as a coordinating service for organizations seeking speakers on Constitution-related topics through its Speakers' Bureau.

One of the first projects undertaken by the Communications Division was the designing of a guide to the Bicentennial -- suitable for dissemination to the general public explaining the purpose of the national Commission and the nationwide scope of the Bicentennial commemoration. The guide urges local and State governments, Federal agencies, and private organizations to develop informative, studious, and serious commemorative activities as well as celebratory ones. Various activities throughout the country are presented along with suggestions on organizing and coordinating small- and large-scale events. The publication has successfully promoted the Commission's resources for planning and coordinating Bicentennial activities.

The Commission newsletter provides information on "who was doing what and where," thereby arousing interest as well as generating ideas. The newsletter is included in the information packets distributed by the Resource Center.

Public interest in the Bicentennial of the Constitution and in Commission activities has intensified, and the Communications staff is deluged with calls and letters from interested individuals and groups requesting news clippings on the Commission, the Constitution, and Bicentennial events. This interest, especially among the print media nationwide, is due largely to the staff's having established working relationships with media outlets. Consequently, the Communications Division often serves as the initial point of contact for persons or organizations interested in organizing Bicentennial events. The Division's original function of generating media enthusiasm and ensuring coverage of events has become more crucial as individual requests continue to accelerate.

Today the Communications Division staff handles an enormous volume of media telephone calls from around the nation; writes and disseminates press releases; stays apprised of activities throughout the nation; reviews Bicentennial-related articles, reports, and speeches; serves as the point of contact for media representatives; negotiates other projects; and performs editing and research functions.

The media-relations function is accomplished through such tools as opinion research, advertising, media contacts, and computerized information. In addition to the *Guide to Celebrating the Bicentennial* and the newsletter, publications include a *Media Guide, a Public Relations Guide, Celebrating the Bicentennial of the U.S. Constitution for Federal Agencies*, and the *First Full Year's Report of the Commission*.

Hundreds of newspapers around the world are receiving Chairman Burger's weekly column distributed by the Associated Press, and his forthcoming article in *TV Guide* will reach 40 million readers. *U.S. News & World Report* recently ran an 11-page cover story on the Bicentennial, while the *Chicago Tribune* Sunday magazine devoted 33 pages to the Constitution. *Newsweek* and *Time* have special sections planned in the coming months. The National Newspaper Association is cosponsoring a Commission-produced Constitutional supplement for distribution to its 5,500 member newspapers.

Numerous television stations have carried shows, interviews and historical vignettes on the Constitution. CBS continues to air its prime-time **"WE THE PEOPLE BICENTENNIAL MINUTES"** each weekday evening, while the **"CBS MORNING PROGRAM"** presents regular Bicentennial segments, including a civics lesson on the Constitution and a visit to James Madison's Montpelier home. Other productions include **"ECHOES OF FREEDOM,"** a 30-second public service television announcement recorded at Independence Hall, produced as an Army Reserve Program and distributed in January to 300 commercial stations and 100 cable stations; **"THE PRESIDENCY AND THE CONSTITUTION,"** a PBS special featuring former Presidents Ford and Carter discussing Constitutional issues, which premiered on May 5th.

Upcoming television programs will include a three-hour ABC prime time special with Peter Jennings and Ted Koppel with a scheduled September air date; a docu-drama based on Catherine Drinker Bowen's *Miracle at Philadelphia;* and **"CONVERSATIONS ON THE CONSTITUTION,"** a program to air in September, 1987, that will discuss Constitutional issues in one-on-one conversations with legal, political, historical, and philosophical leaders and thinkers, funded by General

Motors and hosted by Bill Moyers. Even Charlie Brown and Snoopy will be telling about the Constitution in an animated special this fall, reaching millions who may not stay tuned throughout Bill Moyers' 10-part PBS series, **"IN SEARCH OF THE CONSTITUTION."**

A central Communications outreach program is conducted through the Speakers' Bureau. A state-by-state listing of Constitutional scholars who have agreed to address groups and organizations is available upon request to State and local commissions. The Speakers' Bureau also serves as a coordinating service for national organizations seeking speakers on the Constitution.

Appropriations

Until 16 months ago, many observers were doubtful that, given the newness of the Commission, and the shortage of time, a meaningful commemoration could be prepared. You responded to our emergency with a $12.2 million appropriation in FY '86 and followed up with a Fiscal '87 appropriation of $13.2 million. Given what has been accomplished since then and our plans for the future, there is now widespread consensus that this commemoration will result in more public understanding about the subject being commemorated than has been achieved with any previous commemoration.

This is an enormous task, and we appreciate your support in making it possible. Your keen interest and the provision of funding on a no-year basis has given us the assurance to proceed with planning a full, rich program.

Thus, in making this budget request, the Commission wishes to emphasize:

The vast importance of increasing public understanding of the document that guarantees our freedom;

The unique programs and strategies undertaken by the Commission to succeed in that effort;

The prudent expenditure of appropriations to reach as far as possible; and

The use of your appropriations, wherever appropriate, as leverage to encourage other expenditures toward Commission goals.

There is a multiplier effect to Commission expenditures. A review of 20 significant projects indicates that the Commission has expended an estimate of more than $7 million in time and dollars. These projects have engendered private effort and expenditure that is several times that amount. Often the Commission's effort is invaluable to the programs. In addition to the status it gives them, our infrastructure can focus the creativity and experience of Commission members and staff on obtaining quality design and implementation of projects, incorporate references into our mailings, expand publicity outlets and stimulate support from other groups.

Separate from the projects the Commission cosponsors with private groups, an even larger multiplier impact is obtained from the Commission's outreach efforts which are stimulating investment of countless millions of hours and dollars in Bicentennial activity by States, communities, Federal agencies, private organizations, schools, and the media.

In conclusion, the Commission is working to be frugal and to seek aggressively ways to increase program impact with private sources. The $9,750,000 appropriation request for FY '88 operating expenses, added to the previous appropriations, will assure continuation of the thriving program that has been initiated. Five million dollars included for grants will cover the second year of our five-year program and is critically important to institutionalizing our serious, long-term effort at massive education. We all know that to achieve major change in curricula is an enormous challenge. Your appropriations will enable the Commission to deal with and carry out the growing number of quality projects with which we are becoming involved and the growing deluge of requests for information and assistance we are facing.

Thank you for your continued support.

* * *

Senator HATFIELD. We are just more than pleased to welcome you to this committee and, once again, to affirm our enthusiastic support to you for the work you are doing. You may proceed any way you wish.

INFORMING PUBLIC

Chief Justice BURGER. Thank you, Senator. I don't have a prepared statement. I didn't think this was a necessary occasion for it. But I would like to have it well-understood, as I think you do already, that from the outset, we have looked at this mandate that we have from the Congress as one of informing the American people—though not limited to the American people—on what this Constitution and the system has meant to us.

Very soon, we ran into studies and surveys that were startling. We knew that the understanding of the Constitution was not as widespread as it should be, but we had no idea of the appalling lack of understanding that was revealed by studies made by Gannett and by the Hearst newspapers and done by other studies and surveys.

There were some surveys of school teachers that we did not publish, and we found that school teachers were not as well informed. Obviously, if the school teachers aren't well informed, they don't do much about this problem. Just within the last two weeks the Commission has granted $960,000 in response to requests for nine times that much for summer programs for the teachers.

We have had an Educational Advisory Committee headed by Elliott Richardson for the earlier celebration on the Statue of Liberty and related matters. They have continued as our Advisory Committee, and the advice they gave us, was essentially, "You must spend a lot of time teaching the teachers."

I don't recall now how many different programs are included, but we have granted just under $1 million to programs for teachers in groups of 10, 12 and 30 who would get together for a couple of weeks with adequate instruction and be ready to talk to the young people in the fall.

Our focus for the next 4½ years is going to be on the schools, primarily. We have thought of having 1987 emphasize the historical background, the Convention itself, the hostility in the country toward a central government and a Constitution of the kind that we got. We will focus on the weakness of the Confederation, with each State having its own currency, each state almost an entity in terms of foreign policy, and no system of roads and communication. These are things we discovered people simply don't understand.

I think we are making progress on that, with commissions at the State and city levels. There are, altogether, more than 1,000 of them at work. In my mind we will need additional money in the future years. We have what I will put in quotation marks, because it isn't literally, a "5-year plan." In 1987, we will emphasize the writing of the Constitution and the difficulty of getting it ratified.

Then in 1988, we will focus on Article 1 and the Legislative function. Obviously, the Legislative Branch can't be put in complete isolation from the Executive Branch, because they work together. So in 1988 and 1989 we will focus on Articles 1 and 2.

This year, our essay contest was sponsored by "USA Today" and Gannett. I am sure they spent $2 million, at least, on that program. They are now in the process of judging more than 13,000 essays from every State and territory. Each State winner will receive $1,000 and the national winner will receive $10,000. The topic of this educational program was "Separation of Powers and Checks and Balances."

The 55 winners at the State and territorial levels will become delegates to a reenactment of the Constitutional Convention at Williamsburg, cosponsored by the Commission and the Marshall-Wythe Law School of the College of William and Mary. We are $100,000 short on this project.

These students will spend four days in Williamsburg, which will be covered by C-SPAN, The Wall Street Journal, and National Geographic. This widespread coverage will increase the educational impact. We then will bring them to Washington, where they will be received by Congressional leaders. Details are not worked out. The President most likely will receive them, and I will host a luncheon for them at the Supreme Court.

We hope that these 50 or 55 youngsters will go home as missionaries. To provide this sort of educational function in the years ahead is going to take quite a bit of money—more money than we expect that the Congress will appropriate.

CORPORATE SUPPORT

The Foundation for the Commemoration of the U.S. Constitution is now fully operative. Dwayne O. Andreas, the Chairman and Chief Executive Officer of Archer Daniels Midland Co., is Chairman of the Foundation, and John Meyers, Jr., former Chairman of Publications for Time, Inc., is the President. Other distinguished Americans are trustees. The Foundation is entirely separate from our Commission.

Their function is to raise money for projects which have received prior Commission approval. When we have a project that is going to cost a large sum of money, the Foundation—with our cooperation—tries to persuade an organization to fund it.

American Express has cosponsored what we sometimes call the "Magna Carta trailer," which will be here early in June on the Mall. This project cost over $2 million. There are 15 people accompanying it, and it has been acclaimed in every city it has visited. I think you have seen what a colorful truck it is with that great eagle. "Magna Carta to the Constitution, the Roads to Liberty" is the theme.

It has been so successful that instead of the 100 cities that were initially planned, it has now been extended to 134. Serious consideration is being given to extending it, further possibly even into 1988. Of course, we do not completely educate people about our Constitution just by having this truck, but their minds become focused on it, and they are given material when they go through.

I know that even a tough newspaper man, and I mean tough in the best sense of the word, like Allen Neuharth, chairman of Gannett, called me from Milwaukee and told me about this tour of the United States that he was doing in a very elaborate bus, and which had, by coincidence, been in Chicago; Springfield, Illinois; Madison, Wisconsin, and Milwaukee right after the trailer arrived in each place. Mr. Neuharth reported that there were lines four and five blocks long.

I haven't heard the total figures, but before this is through, well over one million people will have gone through and received materials related to the Magna Carta, the Mayflower Compact, the Constitution, and the Northwest Ordinance.

We will continue to promote projects which we hope the private sector will support, but we will still need appropriations. The large expense will be to have in every college campus in this country—and you know better than I how many colleges there are—programs analyzing each of the Articles of the Constitution; then later on, the amendments.

There have been half a dozen such conferences already in colleges, with one in Carleton, Minnesota, and one at William & Mary a few months ago and another one just beginning at the University of Virginia yesterday and moving up to Washington.

These conferences are completely independent of our Commission. This is the type of activity we are trying to stimulate to put the focus on informing the people of what the Constitution guarantees us. Sometimes we relate it in terms of the recent difficulties over the amnesty for illegal aliens. This country has never had very big walls to keep people out, and it surely has never had walls to keep people in. That message is getting around the world, too.

There are seven countries represented in one of the conferences, and we are looking forward to a joint celebration with the French in 1989, the bicentennial year of their first Republic; 1989 also marks the 200th anniversary of our first governmental operations. We also plan conferences in England with the support of the Law Society and other groups, as well as in each of the other countries of Europe.

We are working closely with USIA and the State Department. There are extensive activities outside of the United States. With some regret, I had to decline an invitation to go to Argentina with a stop in Brazil last week and one very soon in China. But over the next 4 years, we expect to be doing a lot of that type of work in other countries.

Senator, to the extent that I can, I will try to respond to addressed questions, and I have some of the key staff members here who can help with that.

FURTHER ACTIVITIES OF COMMISSION

Senator HATFIELD. Thank you very much, Mr. Chief Justice. As you outlined your current activities and project them in the future for the period that we have set for the celebration, are you persuaded that we can keep the attention and interest of the American people on this type of celebration?

Chief Justice BURGER. I am convinced we can, although it won't be at the same level as in 1987, the year of the Philadelphia affair. Although this event is totally independent of us, we are giving complete cooperation to Philadelphia and We the People 200. In our first meeting of the Commission more than a year ago, we announced that we would plan no activities in Washington for September 17.

That is their day, although many of us expect to participate and be helpful there. I am going to Philadelphia next Monday, which is the 200th anniversary of the first day the delegates had a quorum, to take part in some key ceremonies.

Senator HATFIELD. How many days into the convention was it when they got that quorum?

Chief Justice BURGER. From the first call until the 25th. I think they had been sitting almost 2 weeks. It was not a wasted 2 weeks, because Washington and Madison, having been there for weeks before the convention was called, were doing a little lobbying among themselves with the Virginia plan, and it was time well spent.

Senator HATFIELD. We have been continuing that tradition ever since, haven't we, in terms of quorums and getting to work that way for quorums.

Chief Justice BURGER. As you know, that is the way democracy works.

Senator HATFIELD. Mr. Chief Justice, do you have any figure that would be required to fill out this term of celebration beyond the 1988 fiscal year, what the aggregate cost will be?

Chief Justice BURGER. What it amounts to is that the extent of our programs will depend upon how much we get. This is more or less a two-way thing. It is very difficult to set out a figure and say, "This is what we need."

Senator HATFIELD. Just from the Congress, what might you ask in appropriations, not counting foundation support?

Chief Justice BURGER. We would need enough to support a staff, but the staff need not be as large as it is now. We have an average of about 99. The statute limits us to 100 for the year that can be averaged out.

We are within that statutory limit, and we have over 30 detailees from both the private sector and the public. For example, one of our senior staff members is a senior marketing man lent to us by IBM. The other detailees are from government agencies. The Army has given us ten people; various branches of the government have lent us people.

We can't really prescribe how many people we will need as the program goes from this 1987 vital activity into continuing educational activity.

Senator HATFIELD. If you could ask your staff to supply for the record sort of a ballpark figure estimate for 1988 and beyond 1988, say, fiscal year 1989? Of course, we are considering fiscal year 1988, but for fiscal year 1989, fiscal year 1990 and fiscal year 1991, it would be helpful, I think, because we are trying to look at this like you are, in the total period rather than just a single fiscal year. If you could supply that for the record, that would be helpful.

Chief Justice Burger. We will surely do that, Senator.

FOUNDATION FOR COMMEMORATION OF THE U.S. CONSTITUTION

Senator Hatfield. I noted that you speak very warmly of the Foundation and its role. Therefore, may I assume that unlike the Statue of Liberty, the relationship between the Secretary of Interior and Mr. Lee Iacoca, that we are in a harmonious relationship?

Chief Justice Burger. I have a harmonious relationship with the Foundation, but I am not running the Foundation. I have made it a point with our staff, looking at past history, that we must not confuse the two.

Senator Hatfield. I understand.

Chief Justice Burger. Yet our relations are very cordial. Dwayne Andreas, the Chairman, is an old Minnesotan, and now he has defected to Illinois, but we have been close for years. Mr. Meyers, the president, is from New York.

We will have that information to you with some concrete ideas about private sector support of the program. As far as I am concerned, we began with the idea that we would try to offer $5,000 grants for matching funds to each college to put on a seminar.

I have met with more than 30 college and university presidents and found out that my $5,000 figure was too low. We haven't reached a final figure, but my guess is it would be something like $10,000 even to a small college like Knox or Carleton or Macalester or Hammond. We will then leave it up to them to get the rest of the money.

There is no fixed policy, but my own view is that lecturers who come to those conferences should receive the same compensation or, in a more generous mood, double the compensation that the delegates in Philadelphia received, which was nothing. Pay the expenses of these people, but consider their lectures and their participation in seminars as a patriotic duty, the way the delegates did in Philadelphia.

We can give you those figures, Senator. We will try to give you a notion of what we see down the road as not what the private sector will provide, but what we will ask them to provide.

Senator Hatfield. It would be very helpful, too, to have what the Foundation has raised to this point, up to this date. I assume from your comments earlier that those programs and the way the money the Foundation raised is to be spent is determined solely by the Foundation. Or is it not?

Chief Justice Burger. No. The arrangement with the Foundation is that they will spend no money for any program unless it is approved by the Commission. They are not going off into operations on their own.

Senator Hatfield. In other words, they make recommendations to you that you and the Commission then review and affirm and modify?

Chief Justice Burger. I would almost put it the other way around, Senator. We come up with a program to go to the Foundation and say, "We need money for this."

Senator HATFIELD. I see.

Chief Justice BURGER. One program that we didn't have to solicit is worth $3 million. The Polaroid Company is giving a Polaroid camera to every primary school in the United States, and the aggregate cost is almost $3 million. With it is a little teaching guide as to what to do to record the events relating to the Bicentennial done by the schools. We had a little ceremony down at the Press Club, and happily, "USA Today" gave front-page notice to Polaroid's gift.

There will be others; there are already other gifts along that line.

Senator HATFIELD. Wonderful.

Chief Justice BURGER. The Citizenship Day ceremony on the 16th will probably be on the Capitol Plaza, where we hope there will be a nationwide reciting of the Pledge of Allegiance to the Flag and the reading of the Preamble of the Constitution. This is going to run into the many hundreds of thousands of dollars for all the logistics and the broadcasting.

Two grants are available from the private sector to contribute toward that. One thing that I hope the members of the committee will keep in mind is that when we get whatever appropriatioins we may get, $2.7 million of that has been locked in for what we call the Quigley project from the Center for Civic Education. It is a very good program, and it has been going on quite awhile.

But that money is completely beyond our control. We are merely conduits. You gave it; the Congress gives it to us, and we are required to give $2.7 million. I think in the 1988 budget, it is $2,835,000; is that correct?

Senator HATFIELD. That would be very helpful to us, also, to incorporate in the record not only what the Foundation has raised in dollars, but how they have expended them, including products-in-kind or service-in-kind.

I think the important thing we need to see is how this penetrated every part of the country, not only with the moneys that we appropriate, but almost like an engineering project, the cost-benefit ratio we have gotten back on that from the other resources, foundations, industry, et cetera.

COMMISSION GRANTS

So I think it would be awfully helpful if we can build our record with that information. I note, Mr. Chief Justice, that for fiscal year 1988, the Commission has indicated a $1.3 million increase in grants. The focus, as you say, in 1987, now, is this program. This increase over 1987 for grants, is this taken up primarily or entirely by this focus upon the first two Articles, or these other programs that you have outlined?

Chief Justice BURGER. It will be primarily on teaching the teachers.

Senator HATFIELD. The teaching programs and projects.

Chief Justice BURGER. I must say the teachers are cooperating very well. They acknowledge the inadequacy of their own background.

Senator HATFIELD. Will that do more in 1988? Will we be teaching more teachers in 1988 than in 1987?

Chief Justice BURGER. I hope so.

Senator HATFIELD. The differential will be the geometric expansion of teaching more teachers?

Chief Justice BURGER. Some of it will depend on what our experience is and what our evaluation is of how valuable these programs are. We have an education division headed by Dr. Lane Sunderland on leave from Knox College. Unfortunately, he must return to the college in the fall.

But one of the things we are going to have done is an evaluation of these summer teachers' programs to which we granted $950,000 or $960,000. This is something new, and no one has any real experience with it.

If we should find out that it doesn't have the proper cost-benefit relationship, we would have to take a different approach.

CENTER FOR CIVIC EDUCATION

Senator HATFIELD. We also note that this Center for Civic Education will have another grant of about the same as this year, $2.8 million.

Chief Justice BURGER. $2,835,000

Senator HATFIELD. For fiscal year 1988. Is this a part of this same general fund? Delineate between that and the grants, would you?

Chief Justice BURGER. It is part of the same objective, Senator. I believe they are doing a very good job, but our grants to teachers for summer classes is separate, and I am sure they are making certain that we aren't duplicating or stepping on each other's feet.

The one thing that should be made clear is that we were requested to make a grant to Philadelphia, and the Commission declined it. There may be another request from them. They have raised to date a reported $13 million.

Their focus is certainly in one year, with a great focus on the day of September 17. When you compare that with what we have to deal with, the 50 States and territories and, to some extent, overseas, we are not in any position to give 25 cents to Philadelphia, although I have privately and personally made a contribution to the Philadelphia program, to ensure that there is no attitude except complete cooperation.

Senator HATFIELD. That is personal; there was no Commission contribution?

Chief Justice BURGER. No, the Commission has not contributed. As you know, there have been a lot of problems in Philadelphia which is inevitable when you try to put a program together in a hurry. A leading citizen of Philadelphia, Willard Rouse, took over as director of We the People 200 about a month ago. He has been down to meet with us, and I am going there next Monday.

We have tried to have the closest cooperation on everything except giving them a penny of our appropriated funds. In fact, we have stayed away from requesting money from any of Philadelphia's leaders for national Commission efforts to leave local fundraising channels as clear as possible for We the People 200.

CONGRESSIONAL SESSION IN PHILADELPHIA

Senator HATFIELD. You know, there was talk for awhile of having this Congress, our 100th Congress, meet in Philadelphia. Is that still the plan?

Chief Justice BURGER. Not that I know of. I made a suggestion. New York wants the Congress to come up in 1989 to celebrate the First Congress, and I have suggested that, considering the expense of moving 535 people and some staff members, that they send 26 Senators, as they had in 1789, and 45 House members, which was all they had in 1789. This would, at least, be a symbol. Whether they will work that out, I don't know.

Senator HATFIELD. Mr. Chief Justice, there may be a cost-benefit ratio here that we should apply, because if they sent the Senate, the entire Senate, we might get the whole year's work done, because they met in secret in those days. [Laughter.]

Chief Justice BURGER. There were only 26 of them then. Since I am from the third Branch, I would not want to take a position on that. [Laughter.]

Senator HATFIELD. I am not sure I will offer that as a resolution on the floor, either.

PRESERVATION OF JAMES MADISON'S HOME

By the way, this is peripheral, perhaps, to the Commission's purpose, but it is still very relevant. Have you had any discussions with the National Trust for Historic Preservation relating to the condition of the James Madison home, Montpelier?

Chief Justice BURGER. There have been discussions of that and of some other homes. We have two or three letters, including one about the condition of John Marshal's home in Richmond which is certainly an important national landmark. And there were some discussions just yesterday in Charlottesville on the restoration project for Montpelier.

I think on the whole, we have not been as careful as some other countries, particularly England, in preserving great landmarks, especially of a man like Madison, who really was the architect of the Constitution.

He has been long overshadowed by his distinguished mentor, Thomas Jefferson, and in this future period, I certainly am prepared, and I know others on the Commission are, to do everything I can to not only assist with the physical restoration of his home, but to see to it that Madison has his proper place in history. As you know, there has been legislation adopted on that with a grant and fund arrangement.

I can't speak for the Commission on that, but I think the Madison program should proceed. I hope that they can do something about John Marshall's home. That probably can be done in the private sector. It is not a large project.

Senator HATFIELD. The Congress has made its contribution, as you know, by the designation of the new Library of Congress addition as the James Madison Building. You are right, his stature in history has not been fully appreciated.

Chief Justice **Burger**. I had the pleasure, along with the President and you and others, of dedicating that new building, and I was delighted that Mr. Madison was getting such recognition.

Senator **Hatfield**. It is sad that he has no heirs.

The subcommittee has received a letter from the National Trust for Historic Preservation that will be included in the record at this point.

[The letter follows:]

National Trust for Historic Preservation

March 30, 1987

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice, State, the Judiciary, and
Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

Enclosed you will find a request for fiscal year 1987 supplemental appropriations of $1,665,000 for emergency public safety and code repairs to Montpelier, the estate of James Madison. The home of the nation's fourth President and the Father of the Constitution is now owned by the National Trust for Historic Preservation.

The funds would provide for emergency structural stabilization; state-of-the-art fire, security, water supply and septic systems; an expanded sanitary system; and parking and accessibility improvements for handicapped visitors. Without these repairs, the estate remains in jeopardy, lacking adequate protection from natural disasters such as fire or from further deterioration of the building caused by the elements.

During 1987, the Bicentennial of the Constitution, 60,000 visitors are expected at Montpelier for a wide variety of special events. Our visitors will share in the life and historic importance of Madison, the man, and his great legacy, the U.S. Constitution. The proposed improvements would bring the property into compliance with Virginia building code requirements for public accommodation.

The total cost of the work that will be necessary in order to develop Montpelier as an historic shrine to Madison is estimated to be between $12 million and $14 million. The work will take ten years to accomplish. A vigorous effort to raise these funds from private individual, foundation and corporate sources has just begun. However, we will be unable to raise the funds needed to undertake these emergency repairs in time to begin the initial work necessary to accommodate increased public use of the property.

Mr. Chairman, there are extensive precedents for national support of presidential estates. Many are owned by the government and maintained as historic sites by the National Park Service. Presidential libraries have received federal support. We have brought this situation to the attention of the Bicentennial Commission, and Dr. Mark W. Cannon has endorsed the restoration of Montpelier as a top priority on their list of projects should private funds be raised.

Our need is immediate. An infusion of federal funds for a portion of what is required for Montpelier, in this year of celebration of the role of Madison in the creation of the Constitution, will be a great stimulus to our own fund-raising efforts, will allow the emergency repairs to begin immediately, and will launch the development of the site for use by the general public.

Thank you for your consideration of this request.

Sincerely,

Alan S. Boyd

Alan S. Boyd
Chairman
Board of Trustees

Senator HATFIELD. Mr. Chief Justice, we are, again, grateful to your leadership and to your excellent staff. I wish I could say, "Here is the check today; it is going to support you through 1988," but I am not in that position. I know that you have a lot of enthusiastic members of this Committee and Congress in general for the proper observation of the Bicentennial of the Constitution.

Every day we should be conscious, especially in our work, of the uniqueness of this Constitution. Sometimes, as with this teaching of the teachers, I think maybe we ought to have a little Congressional day for reeducating ourselves to what we are all about in the framework of our Constitution and the historic heritage of the Constitution.

I am sure that as we often get busy with detailed appointments, we forget our own heritage as a Senate. One of the delightful experiences of my being in the Senate is having been here during the tenure and the service of some members who span many years and who represent the continuity of our history. Senator Stennis is a good example of that. I was also fortunate to be here for the last two years of Senator Russell's tenure.

We have a Wednesday morning Prayer Breakfast that meets, as you know. This morning, we had, as most every Wednesday morning, Senator Fulbright, Senator John Sherman Cooper, and in those little informal situations they, again, kindle our interest in our institution, our institution that is part of our Constitution.

So those are things that I think we really might well address ourselves to during this celebration, and maybe the Commission might give some thought as to how the Senate can be more introspective. I am not talking about getting up here and having a joint session and having some pageantry, which might be important, but how we might just think about our own role in this Constitution of 200 years as the institution of the Senate.

I find many of my colleagues surprised to find out that we did function for many years in secret as the Senate. I try to put my mind into that context as compared to televising the Senate today, which I voted against, and the difference of the whole environment of the legislative process, the difference that has occurred since the days of 1789 in New York City.

Chief Justice BURGER. You mentioned those names, Senator. That reminds me of something else that is peripheral, but you might be interested. In the period of 1988, 1989 and 1991, we are looking at each part of this organic law. I am making a private list with the names of former Members of Congress, including the ones you mentioned, plus Barber Conable, Mac Mathias, and a whole array of them, as possible speakers at the seminars in the colleges. I am not anti-academic, but we don't need six professors talking about this, and we don't need six lawyers doing it.

I have suggested as a pattern that if they have lawyers, to have two of them; two former members of Congress, ideally a former House member and a former Senate member; and then political scientists, historians and journalists; and perhaps somewhere in there, given these new problems about genetics, some scientists who will look down the road into the future.

There are some enormous changes that are going to take place in this country in the law and science flowing from the Chapter Pardi case of some years ago when the Court decided that the patent law as enacted by Congress and originally drafted by Thomas Jefferson allowed the patenting of genetic formulas.

Now that is back in front and is very controversial. I was on the Court when that case was decided, and recently said this is what Mr. Jefferson wrote and this is what Congress has allowed to stand for all these years. If Congress wants to say no genetic processes can be patented, Congress is free to do so.

Senator HATFIELD. I have introduced a bill to put that on hold until we do address that issue.

Chief Justice BURGER. That is exactly the kind of discussions that should be taking place as one of the kinds of discussions in these seminars, and I am very hopeful that we will get private sector money.

I have given a figure to the President of the Foundation. I won't mention the total figure, but if you take the number of traditional four-year degree-granting colleges and universities and multiply that by 10,000, you have quite a large figure. We are hoping to get that through the private sector. There has been a very affirmative response to that.

Back to this program of awareness to make people aware of what is going on, the trailer that I mentioned to you will be back out on the Plaza here; I hope it will be on the Plaza, I have just written Senator Byrd to seek permission to put it in front of the Senate area so that members can go out, and their staffs, at an hour when we won't have a line four blocks long and then it would be open to the public.

That will be here on June 1st and 2nd.

Senator HATFIELD. I want you to know the Rules Committee has taken the stand we should have taken many years ago. That is, we are eliminating the parking in that East area and making it a plaza. It doesn't qualify as plaza today. That black top, asphalt parking lot, is a disgrace to this Capitol, in my view.

Chief Justice BURGER. I am delighted to hear that.

Senator HATFIELD. We now have removed 50 cars. We are going to remove 50 in another two weeks, and we are even taking off the lines which show the parking spaces so that that will be available for such things as this. Hopefully, one of these days, we will replace that asphalt with Belgium building block, and doing that, we can really have plaza. There are two marvelous places to put in torches that were given to this country.

Chief Justice BURGER. That will make it look like some of the great places we have all seen in Europe where they have maybe a little more sensitivity to it. I just discovered when we were involved in this business for our legal editor, Senator Byrd mentioned that no commercial advertising will be allowed on there. So there is a small piece not much bigger than this piece of paper from the American Express Company, which has spent over $2 million on that trailer, and we are going to put a wreath of flowers over the name, or maybe an American flag.

Senator HATFIELD. Mr. Chief Justice, you might tell American Express, go down and see the little plaque for Andrew Mellon in the National Gallery of Art. It is a very significant part of that whole building that was, of course, given by Mr. Mellon.

Chief Justice BURGER. He declined to permit his name to be put there.

Senator HATFIELD. He declined to permit his name to be put any other way.

Chief Justice BURGER. Your attention to that when we celebrated the 40th anniversary of the gift a few years ago when I was Chairman of the Gallery tells us something about the volunteer spirit which is unique to this country—private citizens giving. DeWitt Wallace did it; the Mayo Brothers did it; Andrew Mellon did it and thousands of others.

SUBMITTED QUESTIONS

Senator HATFIELD. We do have some additional questions that we will ask the Commission to respond to in the record.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Commission on the Bicentennial of the United States Constitution

Question. Last year, Congress extended the life of the Commission until 1991 in order to commemorate the writing and ratification of the Bill of Rights. Does the Commission believe that you can hold the attention of the American public for three more years to justify the additional expenditures involved?

Answer. Fads and singular events capture the public mind only momentarily. The Commemoration of the United States Constitution, however, is not a one-time event; rather it celebrates a series of historic events. Because the Constitution governs our day-to-day lives, it is important that Americans understand the document that guarantees our freedom.

During the last 18 months, the Commission--along with various supporting organizations--has overcome seemingly insurmountable odds to plan a commemoration that promises more public understanding about the subject at hand than has been achieved by any previous commemoration. The same energies and resources that have met this challenge should also be able to maintain widespread interest through 1991.

The Commission has outlined a systematic, five-year program to serve as a general framework for activities. Each of the steps in the program is tied to specific anniversaries. Thus 1987, the anniversary of the Constitutional Convention, is a time for study of the Constitution and its antecedents. 1988 will be an appropriate year to study the Constitution's ratification. It is also the Bicentennial of the first congressional elections, and therefore properly the year in which to commence the study of the legislative powers granted to Congress in Article I. 1989 could be devoted to an examination of the office of the president and the executive power, as well as the practical application of the doctrine of separation of powers; it also marks the 200th anniversary of the introduction of the Bill of Rights. Activities in 1990, the Bicentennial anniversary of the first sessions of the Supreme Court, could concentrate on the judiciary; 1990 is also the anniversary of Hamilton's plan for funding the federal debt, a plan which widened the political disputes which led to the nation's first great Constitutional crisis, the birth of the party system. Events in 1991 can complete the focus on the Bill of Rights and subsequent amendments.

The tools and resources with which the Commission will hold the public's attention through 1991 include expansion of educational

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activity and a broad, forward-looking communications plan. The Commission is assisted by an outside Communications Advisory Committee chaired by the President of the National Association of Broadcasters and co-chaired by the Executive Vice President of the American Newspaper Publishers Association. Other members of the committee represent thirteen major organizations of print and broadcast media.

Working closely with the Commission, the Advisory Committee will direct the public's attention toward Bicentennial programs and activities. In addition, the prestigious Ohio State Awards' broadcast journalism prizes over the next five years will encourage programs on Constitutional topics.

The following are illustrative of the types of activities the Commission will encourage or carry out to attract public attention during 1988:

- Continue to implement educational programs on the Constitution.
- Work with the New Hampshire Commission to commemorate that state's ratification which put the Constitution into effect. Plan appropriate press conferences and releases.
- Promote an event to commemorate the writing and publication of the *Federalist Papers*. Encourage the print media to publish the *Federalist Papers*.
- Promote creation of new materials and programs that will detail the beginnings of our Republic and provide them to schools, leaders and the news media.
- Encourage political candidates on local, state and national levels to discuss Constitutional history, values and principles. 1788 was the year the first Congressional elections were held under the new Constitution.

Key planning dates for 1987 and 1988 following the September 17 anniversary of the signing include:

Sept. 28, 1787	Congress submits Constitution to states
Dec. 7, 1787	Delaware ratification
Dec. 12, 1787	Pennsylvania ratification
Dec. 18, 1787	New Jersey ratification
Jan. 2, 1788	Georgia ratification
Jan. 9, 1788	Connecticut ratification
Feb. 6, 1788	Massachusetts ratification
April 28, 1788	Maryland ratification
May 23, 1788	South Carolina ratification
June 21, 1788	New Hampshire ratification
June 25, 1788	Virginia ratification
July 26, 1788	New York ratification

In 1989 the Commission would attempt to create a greater understanding of the Federal system of Legislative, Executive and Judicial branches and would begin developing materials for the Bill of Rights commemoration. The creation of the Presidency will be a major focus.

1789 was a critical year, as expectations for the proposed government were tested. On September 25, 1789, Congress submitted the Bill of Rights to the states for ratification.

During 1989 the Commission can be expected to promote such projects as:

- Commemoration of the swearing-in of George Washington as our first President in New York City.
- Work with Congress on commemoration of the first Congress.
- The creation of an interactive Constitutional Museum at Federal Hall in New York.
- Commemorative events concerning the first departments in the Executive Branch.
- Promote expanded use in schools of materials on the creation and development of the three branches of government, functioning their first year much like a continuing Constitutional Convention.
- Encourage the development and use of materials that detail the impact of the Constitution and the creation of the three branches of government.
- Plan an event in New Jersey to commemorate the first state ratification of the Bill of Rights on November 21, 1789.

Bicentennial activities can focus on many key dates in 1989. Such activities could include: hearings and reenactments, Commission meetings, seminars, press releases, conferences, information packets and booklets. Key dates include:

Jan. 7, 1789	Presidential electors were chosen by ten of the states that had ratified the Constitution
Feb. 4, 1789	Presidential electors voted; George Washington was chosen President, and John Adams Vice-President
March 4, 1789	The First Congress convened in New York
April 1, 1789	The House of Representatives achieved a quorum, with 30 of its 59 members present
April 6, 1789	Electors' votes counted, George Washington unanimously elected
April 30, 1789	George Washington inaugurated as the nation's first President

July 27, 1789	Congress established the Department of Foreign Affairs (Department of State)
Aug. 7, 1789	Congress established the War Department
Sept. 2, 1789	Congress established the Treasury Department
Sept. 22, 1789	Congress created the office of Postmaster General
Sept. 24, 1789	Congress passed the Federal Judiciary Act, which established a Supreme Court, 13 district courts and 3 circuit courts, and created the office of the Attorney General
Sept. 25, 1789	Congress submitted to states twelve proposed amendments to the Constitution
Sept. 26, 1789	Senate confirmed John Jay as first Chief Justice
Nov. 20, 1789	New Jersey became the first state to ratify ten of the twelve amendments--Bill of Rights
Nov. 21, 1789	North Carolina became the twelfth state to ratify the Constitution
Dec. 19, 1789	Maryland ratified the Bill of Rights
Dec. 22, 1789	North Carolina ratified the Bill of Rights

In 1990 the Commission will emphasize the Judiciary (Article III): the Supreme Court held its first session, the thirteenth state (Rhode Island) ratified the Constitution and the new capital was established. During this year, Congress passed such important legislation as an act ordering a census, a naturalization law, a patent law, and an act securing copyrights to authors.

During 1990, the Commission can be expected to:

- Develop programs, materials, and events on the Bill of Rights for use in schools and by the media.
- Develop educational and media materials on Washington, D.C., "The Nation's Capital."
- Create material for publications and plan a major event for February 2, 1990, at the Supreme Court, the Bicentennial of the first session of the Court.
- Host a conference of the International Appellate Judges in Washington, D.C., focusing on judicial review.
- Emphasize the Judicial Branch and its role during the entire year.
- Develop education and media material on the history of the Supreme Court.
- Develop materials on "The First Year" of Federalism for use in the media and schools.

- Develop, along with the Rhode Island Commission, appropriate programs and events to commemorate that state's ratification of the Constitution.

- Encourage departments within the Executive Branch to commemorate such anniversaries as census, naturalization, and copyrights that were initiated in 1790.

- Work with Congress and the DC government to plan celebrations for commemorating the District of Columbia as the permanent national capital.

Planning dates for 1990 that will draw public attention include:

Jan. 25, 1790	New Hampshire ratified the Bill of Rights
Jan. 28, 1790	Delaware ratified the Bill of Rights
Feb. 2, 1790	Supreme Court of the United States held its first session
March 1, 1790	Congress passed an act ordering a census
March 10, 1790	Pennsylvania ratified the Bill of Rights
April 15, 1790	A Patent Law was constructed
May 29, 1790	The Constitution was ratified by Rhode Island
May 31, 1790	Copyright law
June 7, 1790	Rhode Island ratified the Bill of Rights
July 16, 1790	Location of the National Capitol was settled
Dec. 6, 1790	All three branches of government assembled in Philadelphia

In 1991, the Commission will undoubtably prepare materials and promote events to commemorate the ratification of the Bill of Rights and the admission of the first new state (Vermont) into the Union.

According to public law 98-101, as amended, 1991 will be the last year of Commission operation. It will therefore be necessary to write, publish and widely disseminate a final Commission Report.

On December 15, 1791, Virginia ratified the Bill of Rights, making it a part of the Constitution. This will be the last event in which the Commission will be involved. On March 14, 1791, Vermont was admitted into the Union. Both of these events deserve appropriate commemoration publicity, including the publishing of brochures and press releases.

In 1991, the Commission may compile a book on the historical materials written during the tenure of the Commission (similar to 1937); to be distributed to Congress, libraries and schools.

This multitude of events stretching over the years ahead will command the attention of the public. In terms of Commission appropriations, our needs include personnel and resources to provide public information and serve the news media, as well as adequate funding to support the many educational activities at primary, secondary and college levels that will be the enduring legacy of the Commission.

Questions. How much more would have to be appropriated after Fiscal 1988 to carry the Commission out until December 31, 1991?

Answer. The $14,750,000 for FY 1988 is broken down into $9,750,000 for operating expenses through December 1989--the original termination date of the Commission--and $5,000,000 for grants in fiscal 1988, the second year of the five-year grant program. Operational requirements beyond that date (for the two year extension) are currently being programmed. This plan, when finalized, will be costed and matching resources requirements will be formalized.

Question. The Commission is budgeting an increase of $1,300,000 for grants in 1988. Why is that necessary?

Answer. The 1987 grant program of the Commission can be termed a success. Although the time restrictions were tight, the total amount requested was nine times as much as our available money. The Commission hopes that in the coming years it will be able to continue the grant program and fund many more projects. The majority of these programs were designed to develop curricular materials on teaching the Constitution to elementary and secondary school students. Many applications were from organizations that proposed teacher institute designed to improve teachers' abilities to teach the Constitution. The Commission has found that not only are curricular units on the Constitution scarce, but very few teachers feel confident teaching the Constitution.

Question. The 1987 grant program included $2.7 million for the Center for Civic Education to administer the National Bicentennial Competition on the Constitution and Bill of Rights. Am I correct that the Center for Civic Education is to receive an additional $2.85 million in 1988? Is it planned to have a series of annual competitions?

Answer. The Center for Civic Education received a grant of $2.7 million to be supervised by the Commission. The Center is not connected with the Commission, but the Commission is a co-sponsor of the project. The Center has requested $2.85 for FY 1988. The Center plans to have a series of annual competitions at least through the Bicentennial of the Bill of Rights in 1991.

Question. The Subcommittee has received a letter from the Chairman of the National Trust for Historic Preservation that will be inserted in the record at this point, The letter indicates that James Madison's Home, Montpelier, is in urgent need of emergency public safety and code repairs.

Has the National Trust discussed this with the Commission?

Answer. On March 2, 1987, the Commission granted official recognition to two events to be held at Montpelier and sponsored by the National Trust for Historic Preservation:

1. The National Opening of Montpelier (March 14-16, 1987)
2. A Celebration of the Signing of the Constitution (September 17-18, 1987)

The restoration plan for Montpelier requires $12 million to be raised over a 10-year period. However, the Trust has an immediate need for $1.6 million to cover emergency repairs of the home (a cost breakdown has been forwarded to the Commission). The proposal has been added to a Commission list of projects for possible funding to be reviewed by the Foundation.

Question. There has been established a Foundation for the Commemoration of the United States Constitution to assist with the fund raising for projects supported by the Commission.

How much has the Foundation raised to date?

How much has the Foundation spent and who determines which projects will be supported?

We had quite a flap between Secretary Hodel and Lee Iacocca over the Statue of Liberty Foundation. How are things working between the Commission and the Foundation?

Answer. To date the Foundation has received $1,285,000 in grants and an additional $2,095,000 has been pledged from six corporations and one foundation, for a total of $3,380,000.

The Foundation has spent over $1,100,000 of the $1,285,000 raised to assist a number of Commission-approved projects, primarily the Roads to Liberty (Freedom Documents Project) Tour. The Foundation only supports projects that have prior approval from the Commission and have been forwarded to the Foundation for the purpose of securing funding other than from the Commission.

The Foundation has been in full operation since February of this year. Both its functioning and its relationship with the Commission have been good. This is due in part to the fact that the Foundation only supports projects that have received prior Commission approval.

Question. Is it still planned that the entire Congress will go to Philadelphia to celebrate the Adoption of the Constitution?

Answer. The Congressional resolution authorizing the July 16th trip to Philadelphia calls for fifty-five delegates, composed of a representative from each state delegation and five members of the House and Senate leadership. In addition, the resolution allows for expenses for any other members who choose to attend. According to an article in the June 4, 1987 *New York Times*, approximately 200 members have expressed an interest in attending the 200th Anniversary of the Constitutional Convention's adoption of the Great Compromise, which created the House and Senate.

Question. The Subcommittee has previously been advised that the Commission supports and will participate in the We the People 200 Committee's plans for commemorating the Constitution's Bicentennial in Philadelphia on July 16, 1987 and September 17, 1987. Specifically, what will be the amount and nature of the Commission's support and participation?

Answer. The Commission has agreed to participate in the We The People 200 Committee's programs. The Chief Justice participated in the opening ceremonies on May 25th. The Commission has taken precautions against conflicting programs and scheduled events. The amount of funding support is now being determined. The Finance Committee met on June 2, 1987, to receive a briefing from the Chairman of We The People 200 and to discuss projects for funding consideration.

QUESTIONS SUBMITTED BY SENATOR RUDMAM

Question. In your FY 1987 budget you have requested $3.7 million for grants to be used to implement programs for schools, teachers, and state and local agencies.

How many grants have currently been awarded? What types of projects have these grants executed? How many grants would be awarded with the FY 1987 request?

Answer. $2.7 million of the $3.7 million was awarded to the Center for Civic Education as Congress directed. Thirty other grants were awarded from 222 applications; the money went to organizations which will implement projects in the coming summer and fall. The projects include teacher's conferences, institutes, and the development of instructional materials. All these programs are directed toward increasing elementary and secondary school students' understanding, appreciation and knowledge of the U.S. Constitution.

Question. In your statement you said that commissions have been formed in all but one state. What state is without a commission? What is preventing this state from forming a commission?

Answer. On May 21, 1987, the national Commission on the Bicentennial of the United States Constitution officially recognized the "Arkansas Constitution Bicentennial Commission." With this recognition, Arkansas became the 50th state with a recognized commission.

Question. The Commission has been appropriated $25.975 million in the last two fiscal years, yet only $8.630 million has been expended. We realize that money appropriated can remain available until expended, but this is the year we celebrate the Constitution's Bicentennial. Do you think the Commission will be using these funds to commemorate the Constitution's Bicentennial or will the majority be used for the programs in the following years? How does the Commission justify asking for an increase in funds when it isn't utilizing funds already received?

Answer. The largest obligation year for the Commission will be FY 87 with a program of $15,626,000. As of May 31, 1987, the Commission has formalized commitments/obligations totaling $12,325,600. We have programmed our spending to have approximately $7,500,000 to carry over into FY 88. That amount, combined with our fiscal 88 request, is expected to provide operating funds through the original termination date of the Commission--December 1989.

Question. How many employees are currently working for the Commission from other Federal agencies? Are any of these employees being compensated through money appropriated to the Commission? How many volunteers are serving on the staff without compensation? How many employees are currently on the Commission's payroll?

Answer. There are thirty-six employees currently working for the Commission from other Federal Agencies, in addition to four detailed summer interns. We have no detailed employees receiving compensation from money appropriated to the Commission. The Commission has nine volunteers serving on the staff. On payroll we currently have ninety-eight employees plus five summer interns.

Question. Money has been appropriated for members to use for travel and transportation. What type of transportation is used for local meetings? Has the Commission purchased any vehicles for transporting individuals, equipment, or displays?

Answer. For local Commission Meetings, two to three rental vehicles have provided basic transportation for all attendees, including Commissioners and speakers. The majority of local travel required by staff is accomplished through Commission-purchased metro farecards. No vehicles have been purchased by the Commission. Equipment and displays are moved by a one-day rental van or by commercial taxi.

Question. The Commission is authorized to accept individual donations as long as they do not exceed $250,000. How much money has been raised through individual donations? What is being done to encourage and advertise individual donations?

Answer. Funds donated directly to the Commission total $72,724. There has been no general solicitation for donations by the Commission, since the Foundation has been handling the fund-raising by working with corporations, foundations and individuals.

Question. The Commission may sell and distribute the Bicentennial logo. Has the Commission authorized the use of the logo? If so how much money has been raised and what will the money be used for? Has a large amount of interest been shown in using the logo?

Answer. The Commission has authorized the use of the logo through license contracts with twenty-six licensees to date.

The authorization of logo licensing was enacted last fall and the licensing program was launched in January, 1987. The bulk of the twenty-six contracts were granted toward the very end of the first quarter of the calendar year. Although licensed products were in the market only a short time in the first quarter, revenue was a substantial $10,290.17. Since the end of the first quarter, one licensee has reported sales of 3,000 units of a $95.00 item in its first two weeks on the market. The revenue generated from logo licensing will be used primarily for publications and educational programs. The goal of the Commission has been to use the logo license for educational impact, generating awareness and the production of revenue.

There has been a great deal of interest in using the logo for educational and commemorative products. The Commission will continue to evaluate each application it receives.

Question. The Commission is working with an advertising firm to finalize plans to produce and distribute public service announcements. How close are these plans to being finalized or are they final? When will they be distributed for broadcast?

Answer. Last year the Commission went to the Advertising Council and asked for assistance in making the public more aware of the Bicentennial of the Constitution. The Ad Council, the highly-respected, non-profit organization through which the advertising and communication industries contribute their skills and resources, agreed to accept the campaign. The Council assigned Scali, McCabe, Sloves, Inc. to the Constitution campaign.

Scali, McCabe, Sloves, Inc. has created print and broadcast ads. The theme of the campaign is:

> "The Constitution. The words we live by."

The ads highlight the role of the Constitution in our daily lives and create a desire to learn more about it.

The PSA titles and subjects include:

1. "President's Oath" - montage of Presidents from Kennedy to Reagan swearing to defend the Constitution.
2. "Recruits" - military recruits taking oath to defend the Constitution.
3. "26th Amendment" - 18-year-olds given the right to vote.
4. "Censorship" - freedom of the press.
5. "Don't Forget" - freedom of speech.

Each broadcast and print PSA ends with:

To learn more about the Constitution write:

Constitution
Washington, D.C. 20599

A response kit, available to those who write in, has been developed and 250,000 are being printed. Each package includes:

- An illustrated booklet with an historical essay by Chief Justice Burger and the text of the Constitution;
- Maps showing the original 13 states, the Northwest Ordinance states, and the entire country; plus key historical dates, a chronology of the amendments and material on each;

- Bookmarks with pictures and biographical material on six Framers;
- A bibliography for young people and one for adults;
- A listing of state commissions for local contacts.

The Ad Council has distributed the first wave of television spots to 906 television stations and 400 cable outlets. The first wave includes the spots on the Presidents taking the oath of office, the 26th Amendment, and Uncle Sam on freedom of speech. The three print ads have been sent to 1,500 of the largest dailies and weeklies, 2,000 consumer magazines, and 8,000 additional newspapers.

Audio spots for radio use have been created from the television spots. They are all 30-second public service announcements on the same themes as the television PSAs. They will be distributed in mid-June. The second wave of television ads will be distributed later in the summer.

Question. One of your projects, the Freedom Documents Project, is currently touring the 13 original states and is going to tour the Northwest Ordinance states. Why isn't this project touring all 50 states? What would the additional cost be to send the project to all of the states?

Answer. One of the primary artifacts involved in the Freedom Documents Project is a copy of the Magna Carta from Lincoln Cathedral in England. That copy was made available for the "Roads to Liberty" Project only from March 9, 1987, to September 14, 1987, which is not enough time to allow the exhibit to visit all fifty states. Twenty-five states and the District of Columbia are being visited, including states near the Original Thirteen and Northwest Ordinance States that have been added when possible. These additional states are Iowa, Nebraska, Texas, Louisiana, Alabama, and Florida. In addition there is currently a proposal to find another available copy of the Magna Carta and to recruit further corporate sponsorship to extend the tour to a number of Western States.

Question. The Commission, along with the Capitol Historical Society, has designed an official medal of the Bicentennial. How will these medals be distributed?

Answer. Distribution of the U.S. Capitol Historical Society medals is handled entirely through the Historical Society. The Commission has not ventured into the retail business at this point. The Commission has distributed thousands of brochures to parties interested in medals and has published stories about the medals in the Commission Newsletter.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Commission on the Bicentennial of the United States Constitution

Question. Would your department/agency favor a biennial budget process? What benefits would your agency achieve in a two-year appropriation cycle?

Answer. With the two year extension of the life of the Commission, a biennial budget process would be favorable. Benefits would include flexibility to meet the peaks and valleys of the workload and for the reprogramming of funds to accommodate unforeseen programs/projects and to program the best use of privately donated funds.

Question. Approximately what proportion of your annual appropriation request would you consider simply repetitious of the previous year's submission?

Answer. Approximately 60% of the annual appropriation would be repetitious of the previous year's submission. This would cover the Congressionally established Grant Programs and operating expenses. The remaining 40% is allotted to bicentennial projects.

Question. What difficulties can you foresee in preparing and submitting a two-year budget to the Congress?

Answer With adequate programming in place, there would be no greater difficulties in preparing and submitting a two-year budget than there would be in submitting an annual budget to Congress.

Question. If you oppose the biennial budget concept, please give this subcommittee your reasons why.

Answer. Not Applicable

SUBCOMMITTEE RECESS

Senator **Hatfield**. Well, Mr. Chief Justice, it has been a good hearing. Senator Hollings has advised me that this subcommittee now has completed its hearings on the 1988 budgets. Therefore, we will stand in recess until the call of the chair. Thank you.

Chief Justice **Burger**. I am not in a hurry for that money, as long as it comes by the end of the week. [Laughter.]

Senator **Hatfield**. And in the full amount.

Chief Justice **Burger**. Thank you very much, Senator.

Senator **Hatfield**. Nice to see you.

Chief Justice **Burger**. Good to see you.

[Whereupon, at 11:50 a.m., Wednesday, May 20, the subcommittee was recessed, to reconvene at the call of the Chair.]

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